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All correspondence may be made at:

House No. 65(19)5, Gandhigram,
Kanpur Nagar-208007

Editorial Office:

The Legal Analyst

Banaras Law Publications

Ashapur- Sarnath

Varanasi-221007

Uttar Pradesh, INDIA

E-mail: thelegalanalyst@gmail.com

Website: <https://sites.google.com/view/the-legal-analyst/>

For any information, please contact:

Mr. Prabhash Pandey

Mobile No.: 8737875669

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BEYOND BOUNDARIES: INDIGENOUS KNOWLEDGE AS THE FOUNDATION FOR ENVIRONMENTAL LAW

M. Nagrajan Achary*

Dr. Sudhansu Ranjan Mohapatra**

Abstract: The environmental crisis on the global level requires presupposing integration of the different approaches to knowledge. In their traditional practice, Indigenous peoples integrate culture, and relationship with the environment as the key to managing the environment sustainably and for acclamation. Even though it has been ascertained to be effective, there is still a broad gap between pre-existing indigenous ways and international environmental laws. In this paper, the author seeks to discuss the possibility of integrating the indigenous knowledge in development of Environmental law with especial observation on the problems involved.

Keywords: Indigenous knowledge, Environmental law, Sustainability, Biodiversity conservation, Climate resilience

Introduction:

Environmental issues are very profound and critical problems of the world today. Global warming, cutting trees and other features of biophysical environment, and pollution have worsened to unprecedented levels that are capable of affecting all ecosystems and human endeavours. Although such problems have benefited from advances of modern scientific methodology in their solution, it is important to acknowledge that these methodologies do not always provide a systemic and holistic educational value of natural systems. This limitation therefore calls for creativity and research that involves other forms of knowledge systems. The traditional knowledge of Indigenous people when it comes to the use of natural resources and protection of the environment is invaluable most especially given that the practice is informed by the interactions that Indigenous people has had with the natural environment for many centuries. In contrast with many of the contemporary methods and practices, indigenous knowledge systems are integrated; people and nature live in symbiosis. The very nature of these systems - rotational farming, sacred groves conservation, and traditional water management mutually illustrate how comprehensive these systems are in terms of sustainability. It is therefore important to acknowledge the merit of such knowledge if the current and the future generation is to benefit from better formulated and fairer environmental laws.

Environmental Law Overview

Environmental law has evolved significantly over the past century, reflecting a growing global awareness of ecological challenges. Early laws focused primarily on resource exploitation and land use control, often overlooking the broader impacts on ecosystems. The mid-20th century marked a shift with the emergence of modern environmental laws, driven by environmental movements and international agreements such as the Stockholm Declaration (1972) and the Rio Declaration (1992). Contemporary environmental law is built on key principles, including the precautionary principle, polluter-pays principle, and

*Research Scholar, Department of Law, Guru Ghasidas Vishwavidyalaya Bilaspur Chhattisgarh.

**Professor, HoD Department of Law, Guru Ghasidas Vishwavidyalaya Bilaspur Chhattisgarh.

sustainable development. These principles aim to balance environmental protection with economic and social considerations. Additionally, frameworks like the Convention on Biological Diversity (CBD) and the Paris Agreement emphasize global cooperation and the need to address issues such as biodiversity loss and climate change. Despite these advancements, most environmental laws remain rooted in Western legal traditions, often neglecting the contributions and rights of indigenous peoples.

Intersection of Indigenous Knowledge and Law

There is growing recognition of the value that indigenous knowledge brings to environmental sustainability. Research has demonstrated that indigenous practices contribute significantly to biodiversity conservation and climate change mitigation. For example, studies of indigenous territories in the Amazon have shown that these areas often exhibit higher levels of biodiversity and lower rates of deforestation compared to non-indigenous regions. Similarly, traditional fire management techniques employed by Aboriginal Australians have proven effective in reducing the risk of large-scale wildfires.

The integration of indigenous knowledge into legal frameworks has also yielded positive outcomes in some instances. For example, New Zealand's legal system incorporates Māori perspectives, particularly through the recognition of the Whanganui River as a legal person, granting it rights and responsibilities. This approach reflects indigenous worldviews that see natural entities as kin rather than resources to exploit.

However, the integration of indigenous knowledge into formal legal systems remains inconsistent and often superficial. While some international frameworks, such as the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), call for the recognition of indigenous knowledge, their implementation is often hindered by political, economic, and social barriers.

The Role of Indigenous Knowledge in Environmental Sustainability Holistic Ecosystem Management

Indigenous knowledge systems exemplify a deep understanding of ecosystems, often promoting biodiversity and ecological balance through sustainable practices. These systems are rooted in the recognition of interconnectedness among all living and non-living entities, fostering a holistic approach to environmental management.¹ For instance, in rotational farming which is rife in the Amazon, farmers rotate the fields they cultivate in order to allow those that were cultivated to regenerate. This method is referred to as swidden or shifting cultivation, avoids soil exhaustion and promotes plant diversification in period of fallow. Likewise, sacred groves that are well-forested regions of Africa and India are protected by cultural or religious taboos. These groves' serve as what might be called gene pools of species where the inhabitants have been displaced because of loss of habitat.

Still, a very powerful and conclusive example can be provided regarding Aboriginal Australians they use traditional fire management techniques called "cool burning." They maintain prescribed, probably smaller blazes in certain time periods, especially during the cool season, to prevent a build-up of dry foliage which is highly combustible thereby preventing major disasters such as

¹ B. S. Institute, *What is Holistic Management?*, (2023) Savory Institute. Available at: <https://savory.global/what-is-holistic-management/> (Accessed: 28 December 2024).

those saw in the United States and Australia. This practice not only serves to safeguard individual and communities as well as ecosystems but also to sustain the natural afforestation with flame sensitive plant species.

The given examples prove that indigenous practices are intrinsically sustainable and can be effectively adjusted and are valuable for the contemporary launching of the principles to save biodiversity.

Resilience to Climate Change

Indigenous knowledge also plays a vital role in mitigating and adapting to climate change. Rooted in centuries of environmental observation, these systems offer practical solutions for building resilience against climate-related challenges.² For instance, the Inuit peoples in the Arctic areas have been capable of identifying the behavioural patterns of sea ice and relating appropriately to the progressive environmental conditions prevailing in those areas. This it must be emphasized is now being accepted by scientists as a vital form of information reports on the effects of climate change on polar systems. In like manner, proven ground water utilization practices from pre-industrial eras like qanats in middle east or jihads in India are being sought to be reinvented as progressive techniques for water harvesting and breaking a new grounds for drought.

The indigenous peoples of the Pacific Islands also apply longstanding measures in fisheries and coastal protection to prevent pollution and control seawater encroachment in the area due to climatic change. These structures like the taro terraces a glimpsed in Fiji gives an indication of food security, control of landslides and flooding all at once providing proofs of how indigenous knowledge addresses climate change...

These contributions go to support the fact that native knowledge should be included in climate adaptation since it provides sustainable solutions which are more compatible with the existing social order.

Contrasting with Modern Environmental Approaches

Although contemporary enviro-technological enquiries have achieved much progress, there is seemingly a tendency to employ reductionist-structural-compartmentalised methodologies that do not accord with the integrity of natural systems. Indigenous knowledge, on the other hand, deals with the problem more systematically and finds long-term solutions more often than short-term ones.³ For example, the current approach used in the conservation of species and ecosystems focuses on producing seemingly safe resources such as the national parks which originally lock out the communities. This approach results in problems of land ownership and indigenous people are often excluded from using the land and performing activities that sustain these systems. Indigenous knowledge on the other incorporates people into the management of ecosystems through acknowledgement that people's lives and wildlife conservation can coexist.

² What is Climate Resilience? (no date) Union of Concerned Scientists. Available at: <https://www.ucsusa.org/resources/what-climate-resilience> (Accessed on 28 December 2024).

³ A. C. Bélisle (et al.), "People and Nature," vol. 4, issue 6, 2022, *People and Nature*, 1513–1535, available at <https://doi.org/10.1002/pan3.10399>.

Also, scientific management of biological diversity frequently introduces utilitarian estimates of species riches, or numbers of animal species or the speed of CO₂ storage. Though helpful, such quantifiable indicators may omit the richness and inter-connectedness, cultural, religious, and relational frameworks as advanced by indigenous knowledge systems of ecosystems. For instance, the Māori of New Zealand believe rivers, mountains and forests to be alive and enshrine familial connection considered rivers as the teeming personality deserving ‘person’ status in legal courts. Such a thought system poses an epistemic antagonism to hegemonic legal-scientific visions of environmental regulation — providing new paradigmatic ways of coping with the environment.⁴

Putting indigenous knowledge and modern science together means that there is potential for positive interaction. For instance, in the Amazon rainforest the native people along with the researcher have initiated inventory protocol that incorporated indigenous knowledge systems with that of western biosystem classification techniques. Likewise in Australia aboriginal people and state organizations have shown that art and science when developed as complementary tool sets can and should provide respect to traditional ecological knowledge through the integration of satellite mapping to control wildfire danger.⁵

Challenges to Integration Legal Recognition of Indigenous Rights

A major difficulty when working towards the inclusion of knowledge from indigenous peoples into environmental law is the relative weakness of legal protection of indigenous people’s rights. Many of indigenous people, for them sovereignty is more translated as the ability to manage their territory, since their culture and customs involve living in a particular area. Nonetheless, colonial experiences as well as the modern states’ practices have failed or erased them, resulting in pervasive land alienation and exclusion.⁶

Perhaps the most significant question that arises here is the question of land rights: much indigenous knowledge is ecologically place-bound. For instance, indigenous people live in the Amazon rainforest and have naturally adopted their knowledge of how to control resources in its relation to the environment. However, this gets threatened by logging mining and agricultural activities that affect these practices and, in some cases, the law does not protect the land of these communities.⁷

International guidance such as United Nations Declaration on the Rights of Indigenous Peoples to some extent serves as a basis for addressing indigenous people’s rights. Co-developed in 2007, this framework focuses on the sovereignty, culture, and representation of the indigenous People. Particularly, Article 26 of the declaration focused on the rights to the lands, territories and resources that are have been traditionally belonging to Indigenous Peoples.

⁴ S. M. Alexander (et al.), “Environmental Evidence,” Vol. 8, issue 1, 2019, *Environmental Evidence*, available at <https://doi.org/10.1186/s13750-019-0181-3>.

⁵ D. Avilés Irahola (et al.), “Human Ecology,” vol. 50, issue 5, 2022, *Human Ecology*, 911–923, available at <https://doi.org/10.1007/s10745-022-00344-2>.

⁶ “UN Declaration on the Rights of Indigenous Peoples,” *Biocultural Heritage* (no date), available at [\(https://biocultural.iied.org/un-declaration-rights-indigenous-peoples#:~:text=They%20have%20the%20right%20to,and%20customs%20\(Article%2011\)\)](https://biocultural.iied.org/un-declaration-rights-indigenous-peoples#:~:text=They%20have%20the%20right%20to,and%20customs%20(Article%2011)) (accessed 28 December 2024).

⁷ *Ibid.*

However, as will be seen when looking at the implementation at the national level there are a lot of governments especially in the third world that do not adhere to the provisions of UNDRIP.⁸

For instance, whereas some countries like New Zealand and Canada have started implementing the rights of indigenous people, some other countries have not relinquished the legal systems that act as an infringement on the sovereignty of those people. UNDRIP Again, the failure of international regimes to provide enforceable political structures makes the challenge worse since indigenous peoples continue being exploited and displaced.

Barriers in Policy and Implementation

In the same way, there is conflict between customary laws and statutory legal system also disapprove the integration of indigenous knowledge into environmental law. Traditional laws which do not require legal framers are used in regulating the utilization and disposition of resources in an indigenous community. These laws are elastic in nature and have always been so because the interaction between the individual and his surroundings is a fluid process.⁹

Code laws for instance are generally flexible compare to statutory laws that are initiated by governments and are known to have firm formats are known for being coded due to the skewer they place for cultural Flavors. These differences make for legal and institutional incompatibilities where statutory laws do not take Canadian aboriginal culture, beliefs and practices into consideration. For instance, the fishing right in the coastal areas often conflicts with the national laws because the indigenous uses might not be proper under statutory because they ignore traditional peer ecological management practices.¹⁰

Moreover, the rigid structure of enforcing bureaucratic policies has its flaws as well. Today's governments and international organisations either do not have the capability or intent to seriously interface with indigenous peoples. Indigenous peoples are left out from policy-making and only policies, which don't address the reality of indigenous practices, as well as indigenous people's preferences, are developed. For instance, environmental conservation measures, which define conservation units without regard to the indigenous people's opinion, will cause loss of the people's livelihood and lack of trust.

Other challenges include lack of structures for the domestication of African Customary law into the mainstream legal frameworks in individual countries. This is the case, however, meaning that some countries have sought to fill this gap—South Africa, for instance has incorporated customary law within its constitution, though many others persist in ignoring indigenous legal systems.

Cultural Misappropriation and Marginalization

The other major concern is reparatory culture prejudice and assimilation. The current global interest in indigenous knowledge systems creates a room where such practices are commercialized and elaborated without appropriate

⁸ Ibid.

⁹ *Addressing customary laws and practices that conflict with formal laws*. Available at: <https://www.endvawnow.org/en/articles/762-addressing-customary-laws-and-practices-that-conflict-with-formal-laws.html> (Accessed: 28 December 2024).

¹⁰ Ibid.

credit or compensation to the native societies.¹¹ For instance large pharma have continued to exploit traditional medicine knowledge and products while neglecting the indigenous people. More referred to as biopiracy it goes against the ability of Indigenous Peoples to protect their intellectual property, while indigenous practices get commodified, they are also robbed of their cultural value.¹²

In addition, indigenous people are also left out in decision-making or have very little control over their affairs hence worsening their decimation of knowledge systems. But as young ones grow and are instilled with dominant culture and forced to embrace economics, what practiced dies gradually, and indigenous knowledge depreciation subsists. This is also due to the fact that most of the indigenous languages have not been accorded recognition and formal support, despite the fact that they contain in them, wealth of ecological information.¹³

These considerations of incorporating indigenous knowledge in environmental law must reduce the above risks, so that control of indigenous cultural and knowledge assets remain within indigenous peoples' hands. Frameworks that enable equitable cooperation include for example, the arrangements on benefit sharing captured in the CBD. However, these mechanisms prove rather effective as long as their implementation is strong and accompanied by other means of exploitation control.

Pathways to Integration

Legislative and Policy Recommendations

Government are central in the processes of mainstreaming indigenous knowledge into environmental law and governance. To this effect then, legislative and policy structures should be framed in ways that recognize, honor and advance indigenous rights and cultures. The first is the legal recognition of indigenous land rights because land is core to the retention and utilisation of IK. This paper shows that clear laws enabling communality and open access to indigenous territories can enable indigenous people to co-manage resources sustainably. For example, governments can use frameworks like IPCA or Indigenous Protected and Conserved Areas model exists in Canada that would allow indigenous people to directly get involved in the management of conservation areas.

Another recommendation is therefore the implementation of FPIC(Free, Prior, And Informed Consent,) in environmental decision-making processes. FPIC(Free, Prior, And Informed Consent,) allows indigenous peoples to be properly consulted and controls their right to approve or disapprove the projects which impact on their territories and resources. This is why, the FPIC(Free, Prior, And Informed Consent,) principles, incorporated into the national legislation, can help the governments develop the policies based on the indigenous experience.

¹¹ Angela Gracia B. Cruz, "Between Cultural Appreciation and Cultural Appropriation: Self-Authorizing the Consumption of Cultural Difference," vol. 50, issue 5, February 2024, *Journal of Consumer Research*, 962-984, available at <https://doi.org/10.1093/jcr/ucad022>.

¹² Ibid.

¹³ Ibid.

There is also need for policies frameworks to contain provisions concerning funding and capacity development for safeguarding and empowering indigenised knowledge systems. It is possible to create programs for indigenous people to record those practices, to maintain and develop indigenous languages, to teach people about ecology through community organisations. In the same way, the inclusion of indigenous knowledge system in national environmental impact assessments could give more elaborate view of the environment and its problems and potential remedies.

For these recommendations to be realised, governments must take cognizance of international instruments including UNDRIP and CBD. The improvement of these global standards can be supplemented by updating national laws to reflect better the recognition of indigenous knowledge.

Institutional Collaboration

The development of an enabling environment to support the integration of indigenous knowledge requires the support of institutions. There remains broad literature on the multiple functions that NGOs, indigenous councils, and scientific communities have towards the management of natural resources.¹⁴

They may be used as a mediator between the indigenous people and the government in as much as they offer service. They can help capacity building activities such as procurement of equipment and funding of investigations/documentation of indigenous practices as well as lobbying for change. For instance, the Forest Peoples Programme worldwide has come out to advocate for indigenous people rights to their ancestral land as well as encouraging conservation through communal efforts.¹⁵

The indigenous councils and representative bodies must be involved in integration since they are aimed to be community based. These councils can be used for voicing indigenous concerns and presenting them before the state administration as well as for supervising the process of policy fulfilment. The following models have been named successful: Sami Parliaments in Scandinavia address common weakly points and act for indigenous people in environmental and culture issues.¹⁶

Another important role is to ensure that scientific communities give credibility and expand the use of Indigenous knowledge in larger environmental systems. Partnership in research programmes that embrace both ecological knowledge and scientific research helps to provide workable ways towards conservation of biodiversity and climatic change resilience. For example, mapping, where people as well as scientific marketers create geography and use plans, is helpful in recognising conservation interests.

In order to develop cooperation with the indigenous people, with policymakers or other interested, even scientific parties, multi-stakeholder forums could be created. Such sites can create avenues for the exchange of best practices, solving of existing disputes, and the development of policies that

¹⁴ D. Ford (et al.), "The Resilience of Indigenous Peoples to Environmental Change," *One Earth*, 2020, Cell Press, available at <https://www.sciencedirect.com/science/article/pii/S2590332220302505> (accessed 28 December 2024).

¹⁵ Ibid.

¹⁶ Ibid.

dissolve negative values attached to indigenous culture but conform to national and international environmental agendas.

Discussion and Implications

Insights Gained

The incorporation of indigenized knowledge in management and protection of environment emphasizes the need to consider such type of knowledge as crucial source of support to scientific and legal approaches. In contradistinction to current trends of technical rationality where specific problems are isolated and resolved, indigenous knowledge system asserts the connectedness of ecosystems and hence a holistic way to deal with them. For example, heritage concepts of ecological management perform functions of sustainability including the shedding systems like rotation agriculture, and the controlled fires systems as adaptable methods of combating global warming effects and enhancing bio-diversity.

Furthermore, indigenous knowledge completes the legal scientific gaps by ensuring that cultural and environmental factors are met since conventional laws overlook them. It offers locally generated strategic recommendations that are not only practical but also sensitive to local conditions. Incorporating indigenous knowledge systems with scientific research offers depth and relevant solutions to the complex issues facing conservationists by coming up with conservation studies that are 'fusion' of the best research and best practices of indigenous people of the targeted region.

Global Relevance

The environmental crisis is a global issue to which there is need of people of different cultures as well as ideas in the change and improvement. First peoples of the world, who occupy 80% of the planet's biological diversity, are critical to this process. Reframing their knowledge systems as valid constituencies of environmental law can pave the way to a more solidarity-based international law.

Recognition of partnership and cooperation with Indigenous Peoples is offered by the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and the Convention on Biological Diversity (CBD). But global action must go beyond lip service in terms of instituting structures that would entail indigenous people to participate in international forums and organizations and also guarantee that the indigenous people shall access fair share of the benefits accruing from the commercial use of traditional knowledge.

A collective strategy may also foster a global solution to a number of transnational environment problems including deforestation and climate change by emulating local practices on international levels. For instance, ancient practices of indigenous Australians and tribal people of the Amazon basin can attest the feasibility of integrating traditional knowledge to minimize the regular occurrence of commercial and wild fires of Australia and the Amazon respectively.

Future Directions

There is much research potential to be discovered in the crossroads between the modern legal systems and indigenous commons. The learning can possibly be made from comparative research of countries which have integrated indigenous point of view into their policies. Also, with the help of anthropology,

law, and environmental science, there is a possibility to advance the research on how to strengthen and institutionalise indigenous practices successfully.

Free, loose and unprotected areas of law might include codification of customary laws within the modern state legal systems, development of co-governance arrangements and indigenous peoples' intellectual property rights protection. Thus, the focus of these areas is going to allow policymakers establish more proper approaches in dealing with environmental issues. Thus the incorporation of indigenous knowledge is not a supplement of justice, but an obligatory measure of contributing to environmental sustainability in the world.

Concluding Observations:

Expert local knowledge is one of the most important and promising aspects of profundity based on the principles of environmental management, which reflects empirical and accumulated experience, focusing on the interaction of ecosystems. Its general approach augments scientific and legal methodologies, it fills the voids and imperfections inclusively of mainstream environmental governance. Indigenous Peoples maintain stewardship over a wide range of bio-cultural resources and can greatly contribute valuable knowledge and practices to tackle contemporary emergent threats like climate change, deforestation, and, in general, loss of bio-diversity. Their understanding cannot be ignored or bypassed since it has to be incorporated into the existing and future environmental legislation.

Through this paper, the author emphasizes the need to fill the gap between indigenous knowledge and the legal systems. Some specific recommendations are: legal recognition of indigenous peoples' land rights; the inclusion of FPIC(Free, Prior, And Informed Consent,) principles into national legislation and regulation; and co-governance arrangements. This partnership is most effective if the governments are able to work hand in hand with NGOs, indigenous council, and other progressive scientific communities. Some examples include New Zealand committing to understanding the Māori worldview as a start toward implementing respectable reforms or learning infrastructures from Canada's Indigenous Guardians Program.

It is time for action therefore. If there remains any doubt that indigenous knowledge systems should have a role in the climate change discourse, then governments, international organizations and civil society must find a way to incorporate them into their decision-making processes. This has necessitated the need for coming up with ways of participation that counts, protection of indigenous peoples' know-how, and fair share of profit. Respect of indigenous people sovereignty and their cultures and their inclusion in policy-making frameworks is not only about the right thing to do but the right thing to do for the sustainable future of the world.

Through cooperation and the entanglement and organization of various knowledge structures we set the stage for creative and sustainable solutions. Towards this direction, the role of indigeneity is not considered as merely an addition to the scientific approach, but as the starting point for reconstituting environmental regulation. It is about the future of the Earth, about the people so as to guarantee an effective cross culture coexistence.

GENERATING ELECTRICITY FROM NUCLEAR ENERGY IN INDIA: LEGAL ASPECTS

Dr. Pradeep Kumar Pandey*

“One of the reasons for preferring nuclear energy as an alternative source of energy is that it is a clean, safe, reliable and competitive energy source which can replace a significant part of the fossil fuels like coal, oil, gas etc. Oil and natural gas resources might exhaust themselves.”

-Hon'ble K.S. Radhakrishnan, J.¹

Abstract: The present State, being a welfare State, is under obligation to make available electricity to every person on equitable basis. It must ensure the generation of electricity in sustainable method, causing minimum loss to the present generation for serving the best interests of the future generation. One of the sources of electricity generation is nuclear energy which is thought to be clean source of energy. This paper unearths the provisions relating to generation of electricity from nuclear energy.

Keywords: Energy, Electricity, Nuclear, Electricity Generation.

Introduction:

Energy, in varied forms, is an essential element for existence and survival of not only human beings but also for other creatures. The main source of energy in this universe is Sun. All, the flora and fauna, are completely dependent on it for various activities. In modern age, the human beings, through their innovative nature, have searched and developed various forms of energy sources broadly classified as non-renewable energy (coal, petroleum, natural gas, nuclear energy etc.) and renewable energy (solar energy, wind energy, geothermal energy, bioenergy, tidal energy, etc.). These are the primary sources of generating electricity by converting it into electrical power. The modern world, which is completely based on electricity power for various developmental activities, without energy cannot be thought of. From lighting our homes and offices to advancements in every walk of life including transportation, defence, health, education, technology, judicial system in addition to essential services like-cooking, cooling, heating etc., everything is dependent on electricity. In nutshell, electricity is the backbone of world's energy supply. It is national asset on which the growth and development of the nation rests. Our daily life, particularly in urban areas, will be completely paralysed, if electricity is not supplied. Thus, it is very clear that electricity generation and its equitable distribution is a necessary function of the State in modern age.

Electricity Generation from Nuclear Energy: A Snapshot

At the time of its independence, India was a power deficit country and in seven decades it has improved a lot in power sector in terms of electricity generation. As per *All India Electricity Statistics General Review 2024*², only

***Associate Professor, Department of Law, Brahmanand P.G. College, Kanpur, U.P.**

¹ *G. Sundarrajan v. Union of India & others*, (2013) 6 SCC 620.

² *All India Electricity Statistics General Review 2024*, Government of India, May 2024 available at https://cea.nic.in/wp-content/uploads/general/2024/General_Review_2024_2.pdf

1.63% electricity was generated by the nuclear energy in India whereas thermal (57.03%), hydro (11.26%) and renewable (30.08%) energy sources have occupied the major chunk of electricity generation in India during 2022-23. In present scenario, the installed electricity generation capacity of India may be viewed as depicted in Table-1 for the years 2017-2024.

Table-1: Installed Electricity Generation Capacity in India- Mode-wise³ (MWe)					
Sl. No.	As on	Thermal	Nuclear	RES	Total
1.	31.03.2017	218,330	6,780	103,037	328,146
2.	31.03.2018	222,907	6,780	115,945	345,631
3.	31.03.2019	226,279	6,780	124,811	357,871
4.	31.03.2020	230,600	6,780	133,955	371,334
5.	31.03.2021	234,729	6,780	142,012	383,521
6.	31.03.2022	236,109	6,780	156,608	399,497
7.	31.03.2023	237,269	6,780	172,010	416,059
8.	31.03.2024	243,217	8,180	190,573	441,970
RES:-Renewable Energy Sources includes Hydro capacity of 25.00 MW and below as reported by MNRE.					

It is evident from Table-1 that the thermal power has more installed capacity for electricity generation whereas nuclear power electricity generation capacity is least. In 2024, the electricity generation capacity by nuclear power has been increased from 6780 to 8180 MW. Table-2 exhibits the data of gross electricity generation in India for the years 2017-2024.

Table-2: Gross Electricity Generation in India- Mode-wise⁴ (GWh)						
Sl. No.	As on	Thermal	Hydro	Nuclear	RES	Total
1.	31.03.2017	993,516	122,378	37,916	81,548	1,235,358
2.	31.03.2018	1,037,14	126,123	38,346	101,839	1,303,455
3.	31.03.2019	1,072,314	134,894	37,813	126,759	1,371,779
4.	31.03.2020	1,042,838	155,769	46,472	138,337	1,383,417
5.	31.03.2021	1,032,611	150,300	43,029	147,248	1,373,187
6.	31.03.2022	1,114,811	151,627	47,112	170,912	1,484,463
7.	31.03.2023	1,206,390	162,099	45,861	203,555	1,617,904
8.	31.03.2024	1,326,549	134,054	47,937	225,835	1,734,375
Source: <i>Growth of Electricity Sector in India from 1947-2024</i> , Central Electricity Authority, New Delhi.						

The gross electricity generation is basically occupied by the thermal power which is in increasing mode but the electricity generated from nuclear power is at unstable rate. The requirement is to work and make nuclear energy as the main source of electricity generation which is very much required for

³ *Growth of Electricity Sector in India from 1947-2024*, Central Electricity Authority, New Delhi available at https://cea.nic.in/wp-content/uploads/pdm/2024/08/Growth_Book_2024.pdf

⁴ *Ibid.*

having a sustainable environment as the nuclear energy in generating electricity does not produce carbon.

The first nuclear power plant in India was Tarapur Atomic Power Station (Units 1 and 2), supplied by General Electric USA, which became operational in year 1969 and the Kudankulam Nuclear Power Station (Unit-2) is the latest nuclear power plant operationalized in 2017 with the cooperation of Russian Federation.

Electricity Generation in India: Legal Framework

The generation of electricity took place during British rule in India particularly in the year 1879 with the demonstration of electric lighting in Calcutta. Thereafter, with the help of technological advancements the electricity generation became possible through different sources. At the same time, it is also important to note that with the objectives of proper regulation the Government of India enacted its first legislation *i.e.* Indian Electricity Act, 1887 which was repealed and replaced by the Indian Electricity Act, 1903. The Act of 1903 was replaced by the Indian Electricity Act, 1910. During this period the electricity supply industry was in the hands of private sector. The Electricity Act, 1948 was enacted for the regional coordination in the development of electricity transcending the geographical limits of local bodies. Further, the Electricity Act, 2003 came into form of law by repealing the Indian Electricity Act, 1910, the Electricity (Supply) Act, 1948 and the Electricity Regulatory Commissions Act, 1998.

In the year 1948 the Constituent Assembly of India discussed regarding the formal legal framework to regulate atomic energy and accordingly enacted the Atomic Energy Act, 1948. Taking into account the expansion in atomic energy and development, control and use of atomic energy for the welfare of the people of India and for other peaceful purposes, the Parliament of India enacted the Atomic Energy Act, 1962 by repealing the earlier Act of 1948. This Act provides the basic regulatory framework for the regulation of nuclear energy related activities. This Act was substantially amended in 1987 empowering the Central Government to produce and supply electricity from atomic energy.

The Central Government under section 22 of the Atomic Energy Act, 1962 is under legal obligation-

- (a) to develop a sound and adequate national policy in regard to atomic power,
- (b) to co-ordinate such policy with the Central Electricity Authority and the State Electricity Boards and other similar statutory corporations concerned with the control and utilisation of other power resources,
- (c) to implement schemes for the generation of electricity in pursuance of such policy
- (d) to operate, either by itself or through any authority or corporation established by it or a Government company, atomic power stations in the manner determined by it in consultation with the Boards or Corporations concerned, with whom it shall enter into agreement regarding the supply of electricity so produced;

Further, the Central Government is obliged-

- (a) to fix rates for and regulate the supply of electricity from atomic power stations either by itself or through any authority or corporation established by it or a Government company, in consultation with of the Central Electricity Authority;
- (b) to enter into arrangements with the Electricity Board of the State in which an atomic power station is situated either by itself or through any authority or corporation established by it or a Government company for the transmission of electricity to any other State

Madras High Court in *Scientific Officer v. P. Sukumar*⁵, discussing the provisions of section 22 observed that “though there is no doubt of the intent on the part of the legislature intended to regulate and control the development, use and disposal of atomic energy. However, it appears that it was not even meant to completely exclude private participation.” It means private players also can be allowed in generating electricity from nuclear energy.

To achieve the objective of nuclear power generation, the Nuclear Power Corporation of India was established in 1987. Further, in tune with national policy the Central Government with the active coordination and cooperation of Atomic Energy Commission, Bhabha Atomic Research Centre, Nuclear Power Corporation of India, Atomic Energy Regulatory Board etc. set up and currently operating twenty-two nuclear power reactors in the country with an installed capacity of 8180 MWe.

The question before Hon’ble Supreme Court of India in *G. Sundarrajan v. Union of India & others*⁶, was raised against the setting up of a nuclear power plant at Kudankulam in Tamil Nadu. Mentioning the need and importance of nuclear energy the Court observed that “economic growth and energy support have to go hand in hand, for the country’s development for which India has entered into various collaboration agreements with U.S.A., Canada, Russia etc. and several Nuclear Power Plants (NPPs) have already been set up in the country... National and International policy of the country is to develop, control and use of atomic energy for the welfare of the people and for other peaceful purposes. NPP has been set up at Kudankulam as part of the national policy which is discernible from the Preamble of the Act and the provisions contained therein. It is not for Courts to determine whether a particular policy or a particular decision taken in fulfillment of a policy, is fair. Reason is obvious, it is not the province of a court to scan the wisdom or reasonableness of the policy behind the Statute.” Though the Court did not accept the prayer for closure of nuclear power plant but it warned to have necessary safety measures and reminded the concerned authorities as: “*Be alert, remain always alert and duty calls you to nurture constant and sustained vigilance and nation warns you not to be complacent and get into a mild slumber*”.

Concluding Observations:

As per the report of the International Atomic Energy Agency (IAEA)⁷, “electricity production from nuclear power rose by 2.6% in 2023 compared to

⁵ W.P. Nos.42419 decided on 15 June, 2022 (Madras).

⁶ (2013) 6 SCC 620.

⁷ IAEA Releases Nuclear Power Data and Operating Experience for 2023 available at <https://www.iaea.org/newscenter/news/iaea-releases-nuclear-power-data-and-operating-experience-for-2023>

2022. Nuclear power continued to generate almost 10% of the world's electricity. The USA is the world's top producer of nuclear electricity, followed by China and France." Further, India with other signatory countries has also accepted its obligation in the United Nations Climate Change Conference, held in December, 2023 in Dubai, "to accelerate the deployment of low-emission energy technologies including nuclear power for deep and rapid decarbonization, particularly in hard-to-abate sectors such as industry." Thus, it is evident from above discussion that the nuclear energy being the environment-friendly source of energy is the best mode of generating electricity. India must also take active and effective steps towards increasing amount of electricity by nuclear energy. As per the report of *Ministry of Power*, Government of India⁸ "8000 MW of Nuclear Capacity is under construction and the total anticipated nuclear capacity addition by 2031-2032 will be 12200 MW."

The requirement is to make public aware about benefits and safety measures about nuclear energy which, in turn, will provide cooperation from public without any oppose particularly in case of setting up any nuclear power plant. At the same time, the international level cooperation is also very much needed to access advanced technologies and best practices. Keeping pace with the world community, India too must work to make nuclear energy as a transformative energy source of Vikshit Bharat.

⁸ Ministry of Power, 28.8 GW power capacity added during March 2022 to December 2023; total installed electricity capacity of the nation stands at 428 GW: Union Power and New & Renewable Energy Minister, 08 February, 2024 available at <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=2003930>

PREVENTION OF SEXUAL HARASSMENT OF WOMEN AT WORKPLACE: A WAY TOWARDS DIGNIFIED LIFE

Dr. Aparajita Dutta*

Abstract: Dignified life is sine qua non for a democratic society. All human being regardless of their gender identity deserves respect, equality and protection from all types of discrimination. Sexual harassment is considered as a defilement of a woman's fundamental right to equality, which is guaranteed by Articles 14 and 15 of the Constitution. The problem of sexual harassment narrates not so much to the tangible biological differences between men and women, but to the gender or social roles which are recognised to men and women in social- economic life, and perceptions about male and female sexuality in a civilised society. Sexual Harassment is omnipresent; there is no institution or industry which is immune to it. Women will not be fully equivalent with men as long as this activity of sexual harassment continues. To check this hazard the Government of India has enacted "The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013" with the objectives of providing a benign and protected work environment for women at workplace and to secure the dignity of the women employees. The present paper censoriously analyses the provisions of the Act, its evolution, objectives, and significance of the Act.

Keywords: Sexual harassment, gender equality, workplace, dignity.

Introduction:

Gender justice is playing a pivotal role to establish peace harmony in our society. Gender discrimination has not been accepted by any civilised society as it leads to violation of basic human rights. Equality is a basic human right and the Constitution of India provides that the state shall not deny to any person equality before the law and equal protection of laws¹. Sexual harassment is regarded as a serious violation of a woman's fundamental right to equality, which has been guaranteed by Articles 14 and 15 of the Constitution of India. Workplace sexual harassment generates an anxious and intimidating work environment, thereby intimidating women's involvement in work and unpleasantly affecting their physical, mental and spiritual wellbeing. Furthermore it is affecting socio-economic growth of a person. The Constitution of India also provides every citizen the right to practice or carry out any profession, occupation, trade, or business², which includes the right to a safe environment, free from all forms of harassment. The law precisely addressing the problem of workplace sexual harassment was enacted in the year 2013. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was made effective from December 09, 2013, by the Ministry of Women and Child Development, India. The Government has also notified rules under the Prevention of Workplace Sexual Harassment Act titled the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules 2013.

Genesis of the Law Sexual Harassment:

Article 1 of the Universal Declaration of Human Rights says that all human being are born free and equal in right and dignity³. It relates to rights,

***Assistant Professor, Centre for Juridical Studies, Dibrugarh University, Dibrugarh, Assam**

¹ Article 14 of the Constitution of India

² Article 19(1)(g) of the Constitution of India.

³ Article 1 of Universal Declaration of Human Rights

dignity and equality and also protects from all forms of discrimination including gender discrimination. The issue of sexual harassment of women at workplace has been a pertinent subject for argument across the world, discussions over this burning issue in the legal ground, only began about 1979 in the United States of America. The Indian Constitution which was adopted in the year 1950, clearly authorises the law makers to frame laws on subjects related to the protection of women from inequalities perpetrated on them since time immemorial. In 1978, the Supreme Court in *Maneka Gandhi v. Union of India*⁴ held that life means a dignified life and the procedure depriving a person of his life or personal liberty must be just fair and reasonable. Accordingly the Indian Parliament has enacted a superfluity of legal protections for the protection of women against sexual harassment. India recognized sexual harassment at workplace as a legal injury in the landmark Supreme Court verdict of *Vishaka v. State of Rajasthan*.⁵ In 1992, Bhanwari Devi, a woman employed with the rural development programme of the Government of Rajasthan was inhumanely gang-raped on account of her efforts to curb the then widespread practice of child marriage. It was a very task for the woman to seek justice for her as there was no such law addressing sexual harassment at that time. However a NGO namely Vishaka came forward and filed a Public Interest Litigation (PIL) for Bhanwari Devi.

This incident exposed the risks that working women were exposed to on a day-to-day basis and emphasised the earnestness for safeguards to be implemented in this regard. In this revolutionary case apex court recognised sexual harassment at the work place as a violation of basic human rights and the judgement of the case laid down guidelines for the active enforcement of basic human right of gender equality through prevention, prohibition and redressal of sexual harassment. The court relied on the Convention on the Elimination of All forms Discrimination against Women (CEDAW), adopted by United Nations, in 1979 and held that in the absenteeism of any law in the field in the country, international treaties can be relied upon to bridge the gap and protect human rights of people in India as dignity is inherent and it should be protected.

Sexual Harassment infringes the Fundamental right of a woman to gender equality under Article 14 of the Constitution of India and her right to life and live with dignity under article 21 of the Constitution which includes a right to a safe environment free from Sexual Harassment. Many judgements of the Supreme Court interpreting these Articles have emphasised the right to lead a life with dignity assured by Article 21 of Indian constitution. Finally in 2013 the Indian Parliament enacted “The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013”

Objectives of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013- Some of the aims and objectives that are incorporated in the Preamble of the Act are as under:

- a. To provide a peaceful working environment for working women.
- b. To preclude violation of the fundamental rights of the women to equality under Articles 14 and 15 and to live with dignity under Article 21 of the Constitution of India.

⁴ 1978 SCR (2) 621

⁵ AIR 1997 SC 3011

- c. To protect the right of women to practice any profession or to carry on any occupation, trade, or business, which includes a right to a safe, secure and enabling environment for every woman, irrespective of her age or employment status which has been guaranteed under Article 19(1) (g) of the Constitution of India.
- d. To protect women against sexual harassment and to assure the right to work with dignity which is a universally recognized human right by the international conventions and instruments such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) ratified on the 25th of June 1993 by the Government of India.
- e. To make provisions for giving effect to international conventions and instruments such as mentioned above for the protection of women against sexual harassment at workplaces.
- f. To create a transparent mechanism for redressal of complaints of sexual harassment in accordance of natural justice.
- g. To provide safeguards against fabricated or malicious complaint by providing punishment for the same.

Analysis of the main provisions of the Act:

The definition of 'sexual harassment' includes unwelcome sexually tinted behaviour, whether directly or by implication, such as (i) physical contact and advances, (ii) demand or request for sexual favours, (iii) making sexually coloured remarks, (iv) showing pornography, or (v) any other unwelcome physical, verbal or non-verbal conduct of a sexual nature. Presence or occurrence of circumstances of implied or explicit promise of preferential treatment in employment; the threat of detrimental treatment in employment; threat about the present or future employment; interference with work or creating an intimidating or offensive or hostile work environment; or humiliating treatment likely to affect the lady employee's health or safety could also amount to sexual harassment⁶.

The precise definition of 'aggrieved woman' is defined under the Act. It says that an aggrieved woman to be a woman of any age, whether employed or not, who alleges to have been subjected to any act of sexual harassment. There has been no linkage between the aggrieved women being an employee. This means that any woman can file a complaint in relation to a particular workspace. The definition of an 'employee' under the Act is objectively wide and covers regular, temporary, ad hoc employees, individuals engaged on a daily wage basis, either directly or through an agent, contract labourers, co-workers, probationers, trainees, and apprentices, with or without the knowledge of the principal employer, whether for remuneration or not, working on a voluntary basis or otherwise, whether the terms of employment are express or implied⁷. Workplace that was introduced by the Act is an extended workplace, it means and includes any place visited by the employee arising out of or during the course of employment, including transportation provided by the employer for the purpose of commuting to and from the place of employment⁸.

The Act requires an employer to set up an Internal Committee (IC) previously known as Internal Complaint Committee (ICC), at each office or branch, of an organization employing 10 or more employees, to hear and redress

⁶ Section 2(n) of POSH, Act, 2013

⁷ Section 2(f) of POSH Act, 2013

⁸ Section 2(o) of the Act, 2013

grievances pertaining to sexual harassment. The presiding officer of the committee shall be a woman employed at a senior level at the workplace from amongst the employees. Not less than 2 members from amongst employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge. One external member from an NGO or association is committed to the cause of women or persons familiar with issues relating to sexual harassment. Not less than half of the IC Members shall be women. The term of the IC Members shall not exceed 3 years. Minimum of 3 Members of the IC including the Presiding Officer are to be present for conducting the inquiry. The Government is required to set up a Local Committee (LC) previously known as Local Complaint Committee (LCC), to investigate and redress complaints of sexual harassment from the disorganized sector or from establishments where the IC has not been constituted on account of the establishment having less than 10 employees or if the complaint is against the employer.

The Act stipulates that the IC and LC shall while inquiring into a complaint of workplace sexual harassment, have the similar powers as are vested in a civil court under the Code of Civil Procedure, 1908 when trying a suit in respect of summoning and enforcing the attendance of any person and examining him on oath and requiring the discovery and production of documents. Procedure for filing the Complaint An aggrieved woman who intends to file a complaint is required to submit six copies of the written complaint, along with supporting documents and names and addresses of the witnesses to the IC or LC, within 3 months from the date of the incident and in case of a series of incidents, within a period of 3 months from the date of the last incident. The IC/ LC can extend the timeline for filing the complaint, for reasons to be recorded in writing, by a period of 3 months. The law also makes provisions for friends, relatives, co-workers, psychologists, psychiatrists, etc. to file the complaint in situations where the aggrieved employee is unable to make the complaint on account of physical incapacity, mental incapacity, or death⁹. However consent of the aggrieved woman is necessary for the same. In 2021¹⁰ the court held that same sex complaint may be maintainable as the definition of respondent include both male and female human being¹¹. The new law authorises the IC and the LC to recommend to the employer, at the request of the aggrieved employee, interim measures¹² such as

- a) transfer of the aggrieved woman or the respondent to any other workplace; or
- b) granting leave to the aggrieved woman up to a period of 3 months in addition to her regular statutory/ contractual leave entitlement

However the Act makes provision for punishing a person for filing false complaint or malicious complaint.¹³

The Justice JS Verma Committee recommendations: The Justice JS Verma Committee was formed after the Nirbhaya incident in December 2012 to recommend ways to tighten laws against offences against women. The committee's recommendations included:

⁹ Section 6 of the POSH Act, 2013

¹⁰ Malabika Bhattacharjee v. Internal Complaints Committee, Vivekananda College and Ors, 2021(1) SCT431(Culcutta)

¹¹ Section 2(m) of POSH Act, 2013

¹² Section 12 of the POSH Act, 2013

¹³ Section 14 of POSH , Act 2013

- a) The committee recommended establishing a separate tribunal outside of the organization to receive and address sexual harassment complaints.
- b) The committee recommended that the complainant attempt conciliation before involving the organization's internal committee.
- c) The committee recommended holding employers accountable if they allowed sexual harassment to become widespread and systemic.
- d) The committee recommended abolishing the three-month time limit for filing a complaint.
- e) The committee opposed penalizing women for false complaints.
- f) The committee recommended that a complainant should not be transferred without her consent

However, none of the suggestions given by the Committee were replicated in the Act on sexual harassment at workplaces.

Concluding Observations:

The Act is a strong weapon for prevention of work place harassment. However the major defect arises from the perspective of implementation and compliance of the Act. Most of the unorganised workspaces do not have an IC in place. There is no awareness among the employees that they can file a complaint under the POSH Act. Furthermore, employees both male and female do not understand what constitutes sexual harassment as they do not have such kind of awareness programme to make them understand. Sometime due to limited time period they were unable to make themselves ready to file the complaint. The present Amendment Bill of 2024¹⁴ seeks to eliminate Section 10, thereby abolishing the conciliation process entirely to avoid coercion, undue influence and misrepresentation. While it is currently challenging to determine the accuracy and reasoning behind the proposed amendments, a careful analysis of the potential impacts is crucial. The Bill also advocates for extended time period from 3 months to one year so that the aggrieved women can make herself ready to file the complaint.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is in force since 2013, the awareness regarding the consequences of sexual harassment and its redressal against the same is inadequate. The effective application of the POSH Act, 2013 not only necessitates creating an environment where women can speak up about their grievances without distress and get justice but sensitization of men towards the treatment of women at the workplace is equally necessary. The most significant of all is to identify the basic human dignity of females. Not only female, everyone deserves respect and all are entitled to a dignified life. Everybody should first be cherished in society then only a peaceful society will be established. A workplace free from harassment is very essential to preserve dignity, equality, liberty and justice.

¹⁴ https://www.kelphr.com/pdf/Posh%20amendment_February_2024.pdf

INTERNATIONAL LEGAL REGULATION OF CHEMICAL WEAPONS: AN OVERVIEW

Shambhu Kumar*

Abstract: The life and chemical sciences are in the midst of a period of rapid and revolutionary transformation that will undoubtedly bring societal benefits but also have potentially malign applications, notably in the development of chemical weapons. Such concerns are exacerbated by the unstable international security environment and the changing nature of armed conflict, which could fuel a desire by certain States to retain and use existing chemical weapons, as well as increase State interest in creating new weapons; whilst a broader range of actors may seek to employ diverse toxic chemicals as improvised weapons. Stark indications of the multi-faceted dangers we face can be seen in the chemical weapons attacks against civilians and combatants in Iraq and Syria, and also in more targeted chemical assassination operations in Malaysia and the UK. The Article examines the current capabilities, limitations and regulations of the existing international arms controlling law and disarmament architecture notably the Chemical Weapons Convention in preventing the development and use of chemical weapons. Through the employment of a novel Holistic Arms Control methodology, the authors also look beyond the bounds of such treaties, to explore the full range of international law, international agreements and regulatory mechanisms potentially applicable to weapons employing toxic chemical agents,

Keywords: Chemical weapons, international law, regulations, conventions, treaty, community, conflict.

Introduction:

The use and possession of chemical weapons is prohibited under international law. However, several nations continue to maintain active chemical weapons programs, despite a prevailing norm against the use of chemical weapons and international efforts to destroy existing stockpiles. A chemical weapon is any toxic chemical that can cause death, injury, incapacitation, and sensory irritation, deployed via a delivery system, such as an artillery shell, rocket, or ballistic missile. Chemical weapons are considered weapons of mass destruction and their use in armed conflict is a violation of international law. World communities consensus for the regulation of chemical weapons is appreciable but the lack of willingness on its implantation in a true spirit is now become a critique issue after its use in Arabian Countries more explicitly in Syria. In general term of sense chemical weapons are a weapons of mass destruction like biological and nuclear weapons which have potency to destruct our human society within few minutes. Consequences of use of such ghastly weapons in Syria are a best example and apprehension about its use in future is a challenging question. United Nations report evidently conformed that chemical weapons have been used in Syrian Crisis in which thousands of civilian died. In this situation, the attitude of the world community about international investigation and humanitarian intervention or responsibility to protect was different for the protection of civilians¹. There may be several reasons behind it but the fundamental reasons are lack of strict prohibition under Chemical Weapons Convention and its weaker implementing agency.

* Assistant Professor, Department of Law, Bramhanand PG College, Kanpur

¹ The Organization for the Prohibition of Chemical Weapons is the implementing body of the Chemical Weapons Convention (CWC), which entered into force in 1997. As of today OPCW has 190 Member States, who are working together to achieve a world free of chemical weapons.

Historical Background:

Chemical weapons have been used as a means of warfare during the 1st and 2nd World war mostly and slightly before this tragedy among the various countries in the world in which destructive nature of this weapons became well known. The International efforts to frustrate such use have been undertaken internationally in the first international agreement dates back to 1675 between France and Germany in Strasbourg.

Most of the major powers in World War II developed, produced, and stockpiled large amounts of chemical weapons during the war. Since the end of the war in 1945, there have been only sporadic reports of limited use of chemical weapons, including in the Yemen war of 1963-1967 when Egypt bombed Yemeni villages, killing some 1,500 people. The United States heavily used herbicides such as Agent Orange and tear gas in the Vietnam War in the 1960s; although such chemicals are not covered under the Chemical Weapons Convention (CWC), some observers saw this as chemical warfare. Iraq used chemical weapons in the 1980-1988 Iran-Iraq war and against the Kurds in Halabja in 1988. These two cases provoked widespread public opposition to the horrors and indiscriminate nature of deadly chemical agents and certainly helped advance CWC negotiations, which had begun in the early 1980s, to their conclusion in 1992².

Next step towered the use of such ghastly weapons was made in 1974 the Brussels Convention on the Law and Customs of War which prohibits the employment of poison or poisoned weapons, and the use of arms, projectiles or material which have potency to cause unnecessary suffering. The third step in this regard was an international peace conference held in The Hague in 1899 led to the signing of an agreement that prohibited the use of projectiles filled with poison gas. The horrors of chemical warfare in the 1st Word War looked as exterminate of human life. And the next international document was Geneva Protocol 1925 which prohibitions the use of asphyxiating, poisonous or other gases, and bacteriological methods of warfare. Finally effort on the elimination of chemical weapons was the Convention on Chemical Weapons that came into existence on 1993 and entered into force on 29 April 1997. An organization known as OPCW (Organization for the Prohibition of Chemical Weapons) was established for the compliance of this Convention. There is a complementary relationship between the 1925 Geneva protocol and the Chemical Weapons Convention in which first prohibited the use of poisonous gas as a weapon of war but not their possession and second then went even further and outlawed the production, stockpile, transfer and use of chemical weapons. Countries that ratified the treaty pledged to destroy their existing stockpiles.

Instead of various international humanitarian documents particularly CWC and Geneva Protocol on the subject such ghastly weapon has been used in Syria and now continued to be used in Palestine. A team of UN chemical weapons inspectors have confirmed that the nerve agent 'sarin' was used in an attack on the Ghouta agricultural belt around Damascus on the morning of 21

² Daryl Kimball, Chemical Weapons: Frequently Asked Questions, Director for Nonproliferation Policy, 202-463-8270
<https://www.armscontrol.org/factsheets/chemical-weapons-frequently-asked-questions>
accessed on 12/01/2025.

August 2013³ in which within hours, dozens of videos were uploaded of large numbers of distressed and visibly sick adults and children with no external signs of injury. In some of the most graphic footage, dozens of bodies, including many small children and babies, were seen laid out in rows on the floors of clinics and mosques, and on streets in Muadhamiya, Ein Tarma, Zamalka and nearby areas.⁴ In this incident it is difficult to establish a precise death toll from the attack however a preliminary U.S. government assessment determined that 1,429 people were killed in the chemical weapons attack, including at least 426 children, though this assessment will certainly evolve as we obtain more information.⁵ This incident wasn't the first use of chemical weapons in Syria as The preliminary U.S. government assessment "we assess with high confidence that the Syrian regime has used chemical weapons on a small scale against the opposition multiple times in the last year, including in the Damascus suburbs."⁶ Even though, such dangerous weapons are used in many times after 21 August 2013 attack. A global chemical weapons watchdog said that a toxic chemical, almost certainly chlorine gas, was used 'systematically and repeatedly' as a weapon in northern Syria village earlier in 2014⁷. News papers confirms that Syrian government forces have dropped barrel bombs on civilian areas, including some believed to contain the chemical agent chlorine in eight incidents in April⁸.

In the light of above historical background it can persuasively argued that present document on elimination of chemical weapons are now became a matter of debate within international community. So it is pertinent to describe that which types of rights and obligations exist to the States Parties under the

³ The first reported use of chemical weapons came at 02:45 local time on 21 August in Ein Tarma, in about 6km (3.7 miles) east of the centre of Damascus, and again at 02:47 in Zamalka, an adjoining district. Using witness statements, GPS information and satellite imagery, Human Rights Watch confirmed four sites in Zamalka where at least eight rockets struck - al-Mahariq Street, Naher al-Tahoun Street in the Bostan area, near the Hamza mosque, and near the Tawfiq mosque in the al-Mazraat area. In Muadhamiya, a town about 20km (12 miles) to the west of Zamalka, was struck by rockets at about 05:00 local time. One opposition activist said he counted seven projectiles falling in two areas - four next to the Rawda Mosque, and the other three about 500m (1,640ft) away in the area between Qahwa and Zeitouna Streets. For more details See News, BBC Middle East, Syria chemical attack: What we know, published on 24 September 2013, available at <http://www.bbc.com/news/world-middle-east-23927399>, as accessed on 12/01/2025.

⁴ See News, BBC Middle East, Syria chemical attack: What we know, published on 24 September 2013, available at <http://www.bbc.com/news/world-middle-east-23927399> as accessed on 12/01/2025.

⁵ Office of the Press Secretary, Government Assessment of the Syrian Government's Use of Chemical Weapons on August 21, 2013, Published on 30 August 2013. available at <http://www.whitehouse.gov/the-press-office/2013/08/30/government-assessment-syrian-government-s-use-chemical-weapons-august-21> as accessed on 12/01/2025.

⁶ Office of the Press Secretary, Government Assessment of the Syrian Government's Use of Chemical Weapons on August 21, 2013, Published on 30 August 2013, available at <http://www.whitehouse.gov/the-press-office/2013/08/30/government-assessment-syrian-government-s-use-chemical-weapons-august-21> as accessed on 12/01/2025.

⁷ Chemicals Weapons used 'systematically and repeatedly' in Syria Watchdog said, Published on 10 September 2014, available at <http://www.cbsnews.com/news/chemical-weapon-used-systematically-and-repeatedly-in-syria-watchdog-says/>, as accessed on 12/01/2025.

⁸The guardian, Syria and Isis committing war crimes, says UN, Published on 27 August 2014, available at <http://www.theguardian.com/world/2014/aug/27/syria-isis-war-crimes-united-nations-un> as accessed on 12/01/2025.

latest Convention on chemical weapons known as Chemical Weapons Convention, 1993.

Legal Obligation of States Parties under the Convention:

The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction better known as the Chemical Weapons Convention comprises 189 States Parties. The membership of this convention manifests its universality at the word however recent use of chemical weapons in Arabian country like Syria send a negative message to the states parties about the its obligations. General principles of this Convention obliged each State Party never under any circumstances: 'to use chemical weapons; to develop, produce, otherwise acquire, stockpile or retain chemical weapons, or transfer, directly or indirectly, chemical weapons to anyone; to engage in any military preparations to use chemical weapons; to assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Convention.'⁹ Additionally, each State Party of this Convention has undertaken responsibility 'to destroy chemical weapons it owns or possesses, or that are located in any place under its jurisdiction or control',¹⁰ in accordance with the provisions of this Convention.¹¹ Furthermore, states parties are also bound 'to destroy any 'chemical weapons production facilities'¹² it owns or possesses, or that are located in any place under its jurisdiction or control.'¹³ States Parties are also obliged not to use riot control agents as a method of warfare may be seen as a one of the most principle of this Convention. Article III imposes additional obligation which requires states-parties to declare in writing to the OPCW their chemical weapons stockpiles, chemical weapons production facilities (CWPFs), relevant chemical industry facilities, and other weapons-related information.¹⁴ Countries that were original States Parties to the CWC were required to submit their initial data declaration not later than 30 days after entry into force. Countries that ratified after the CWC entered into force, or acceded, became States Parties 30 days

⁹Article 1 (1) of Chemical Weapons Convention.

¹⁰Article 1 (2) of Chemical Weapons Convention.

¹¹'Destruction of chemical weapons' means a process by which chemicals are converted in an essentially irreversible way to a form unsuitable for production of chemical weapons, and which in an irreversible manner renders munitions and other devices unusable as such. Each State Party shall determine how it shall destroy chemical weapons, except that the following processes may not be used: dumping in any body of water, land burial or open pit burning. It shall destroy chemical weapons only at specifically designated and appropriately designed and equipped facilities. Each State Party shall ensure that its chemical weapons destruction facilities are constructed and operated in a manner to ensure the destruction of the chemical weapons; and that the destruction process can be verified under the provisions of this Convention. For more details see, Part IV (A) of the Verification Annex, Chemical Weapons Convention.

¹² For more details about 'Chemical Weapons Production Facility' see Article 5 of Chemical Weapons Convention.

¹³Article 1 (4) of Chemical Weapons Convention.

¹⁴Article 3 of Chemical Weapons Convention and Part VI (A) of its Verification Annex. According to this States-parties are bound to must declare all chemical weapons stockpiles, which are broken down into three categories: Category 1, chemical weapons based on Schedule 1 chemicals, including VX and sarin; Category 2, chemical weapons based on non-Schedule 1 chemicals, such as phosgene; Category 3, chemical weapons including unfilled munitions, devices and equipment designed specifically to employ chemical weapons.

after the deposit of their instrument of ratification or accession and are required to submit their initial data declaration 30 days after becoming a State Party.¹⁵

The CWC has not only imposes obligation upon the States Parties but also given certain rights. Article IV of Convention states that each State Party has the right, subject to provisions of the convention, 'to develop, produce, otherwise acquire, retain, transfer and use toxic chemicals and their precursors' for prophylactic, protective or other peaceful purposes.

Along with the certain rights and obligations the Convention also imposes duties on States Parties under which it is said that 'each State Party, in accordance with its constitutional processes, adopts the necessary measures to implement its obligations under the Convention.'¹⁶ These necessary measures should prohibit both natural and legal persons anywhere on a State Party's territory or in any other place under its jurisdiction as recognized by international law from undertaking any activity prohibited to a State Party. It is also required to enact penal legislation with respect to such activity.¹⁷

The above mention obligations, rights and duties are only for the States Parties to the Chemical Weapons Convention but not for the Non-States Parties, as mentioned in the provisions of this Convention. Therefore, the questions arise whether the States how have not joined the Convention are neither bound to full the obligations and duties nor entitled to enjoy these rights as contained under the provisions of the convention. In context Robert Mardini said that the prohibitions on the use of these weapons are now part of customary international humanitarian law, which means they apply to all parties to all armed conflicts even if they have not joined the treaties.¹⁸ Therefore, each and every States of the world society are bound to never in any circumstances use, develop or stockpile of chemical weapons under the customary international humanitarian law because of its nature to cause 'unnecessary suffering and superfluous injury'¹⁹ as well as 'indiscriminate nature'²⁰ of their effect. Rule 74

¹⁵ Articles IV and V, and the corresponding parts of the Verification Annex, provide detailed requirements governing the implementation of the obligations on the destruction of CW and CWPFs.

¹⁶ See, Article 1 (1) of Chemical Weapons Convention.

¹⁷ Unclassified Condition (10) (C) Report, Compliance with the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons And on Their Destruction, Prepared by the U.S. Department of State, August 2011, available at <http://www.state.gov/documents/organization/170653.pdf>, as accessed on 12/01/2025.

¹⁸ See, Interview of Robert Mardini, head of operations for the Near and Middle East (ICRC), Chemical Weapons: An absolute prohibition under international humanitarian law, published in ICRC Website on 18/07/2013, available at <https://www.icrc.org/eng/resources/documents/interview/2013/07-18-syria-chemical-weapons.htm>, as accessed on 12/01/2025.

¹⁹ Rule 70 of International Humanitarian Law. The prohibition of the use of means and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering is set forth in a large number of treaties, including early instruments such as the St. Petersburg Declaration and The Hague Declarations and Regulations. The prohibition on the use of chemical and biological weapons in the Geneva Gas Protocol was originally motivated by this rule. Its reaffirmation in recent treaties, in particular Additional Protocol I, the Convention on Certain Conventional Weapons and its Protocol II and Amended Protocol II, the Ottawa Convention banning anti-personnel landmines and the Statute of the International Criminal Court, indicates that it remains valid; See, Marie

of international customary international humanitarian law specifically prohibits the use of chemical weapons.²¹ It is significant that 'employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices' is listed under Article 8 (2) (b) (xviii) of International Criminal Court statute as a war crime over which the Court has jurisdiction.²² Instead of customary as well as conventional international law chemical weapons have been used in the Syrian not only before but also after the signature and ratification of CWC.²³ The deadliest attacks were the Ghouta attack in the suburbs of Damascus in August 2013. On 21 August 2014 the Syrian opposition accused military forces loyal to President Bashar al-Assad of launching a chemical attack against civilians in the neighborhood of Jobar in central Damascus where more than 1400 civilians were killed.²⁴ However, it is not confirmed till now that who is using such destructive weapons. The Syrian government and opposition blamed each other for the attack. Many governments, including in the Western and Arab worlds, said the attack was carried out by forces of Syrian President Bashar al-Assad, a conclusion echoed by the Arab League and the European Union. The Russian government called the attack a false flag operation by the opposition to draw foreign powers into the civil war on the rebels' side. It important to mention here there is nothing any legal relevancy under the conventional and customary international humanitarian law to find out who is using chemical weapons. States are the sole authority to regulate chemical weapons that are located in any place under its jurisdiction or control.

National Authority for Chemical Weapons Convention:

India signed the Chemical Weapons Convention on January 13, 1993 and ratified it on September 3, 1996. The Convention came into force on October 31, 1996. The Chemical Weapons Convention Act, 2000 and the National Authority for Chemical Weapons Convention (NACWC) are the main regulations for chemical weapons in India. This Act gives effect to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical

Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, Vol. 1, Cambridge University Press, United Kingdom: 2009, p. 237.

²⁰See Rule 71 of International Humanitarian Law establishes this rule as a norm of customary international law applicable in both international and non-international armed conflicts. Weapons that are by nature indiscriminate are those that cannot be directed at a military objective or whose effects cannot be limited as required by international humanitarian law. Additional Protocol I prohibits the use of weapons which are "of a nature to strike military objectives and civilians or civilian objects without distinction". This prohibition was reaffirmed in the Statute of the International Criminal Court. See, Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, Vol. 1, Cambridge University Press, United Kingdom: 2009, pp. 244-245.

²¹ Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, Vol. 1, Cambridge University Press, United Kingdom: 2009, pp. 259-163.

²² *Ibid.*

²³ Syria signed or ratified CWC on 14 October 2013; See, See OPCW Website, Organisation for the Prohibition of Chemical Weapons, About OPCW, Member States of the Organisation for the Prohibition of Chemical Weapons (OPCW), Member State- Syria, available at <http://www.opcw.org/about-opcw/member-states/member-states-by-region/asia/member-state-syria/>, as accessed on 12/01/2025.

²⁴ Ara News, Syrian regime launches chemical attack against Jobar in Damascus: opposition, published on 21 August 2014, available at <http://aranews.net/2014/08/syrian-regime-launches-chemical-attack-jobar-damascus-opposition/>, as accessed on 12/01/2025.

Weapons. It applies to India's citizens, as well as the branches and subsidiaries of Indian companies outside of India²⁵ and whereas India, having ratified the said Convention, has to make provisions for giving effect thereto and for matters connected therewith or incidental thereto. It was enacted by Parliament in the Fifty-first Year of the Republic of India. This Act may be called the Chemical Weapons Convention Act, 2000. It extends to the whole of India, and it shall apply to citizens of India outside India and associates, branches or subsidiaries, outside India of companies or bodies corporate, registered or incorporated in India. It shall come into force on such date¹ as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions of this Act.

NACWC has been established under the Chemical Weapons Convention Act, 2000 for implementing the provisions of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, signed on behalf of the Government of India at Paris on the 14th day of January, 1993. NACWC is an office in the Cabinet Secretariat, Government of India²⁶. The National Authority for Chemical Weapons Convention (NACWC) has been set up as an office of the Cabinet Secretariat, Government of India in 1997 to fulfill, on behalf of the Government of India, the obligations under the Chemical Weapons Convention and to act as the national focal point for effective liaison with the Organization for the Prohibition of Chemical Weapons (OPCW) and other State Parties on matters relating to the Convention. This office of the Cabinet Secretariat is responsible for fulfilling India's obligations under the Chemical Weapons Convention. The NACWC also acts as the national focal point for liaising with the Organization for the Prohibition of Chemical Weapons (OPCW) and other State Parties.

Concluding Observations:

The fundamental principle under the CWC is to eliminate weapons of mass destruction specifically chemical weapons. To achieve this aim Convention imposes bundle of obligations and duties upon the States Parties. Because of universal consensus on the prohibition of chemical weapons, those countries that are not party to this Convention bound to leave the culture of chemical weapons. But, aforesaid situations so that world societies specifically Syria are not fulfilling the obligations of humanitarian document on chemical weapons. So, now a day question of implementation of CWC became disputable in lieu of specific implementing body known as OPCW under the Convention.

²⁵ <https://www.google.com/> national regulation of chemical weapons in India, accessed on 12/01/2025.

²⁶ <https://nacwc.gov.in/> accessed on 12/01/2025.

LAWS RELATED TO INTERNATIONAL ADOPTIONS IN INDIA: A CRITICAL OVERVIEW

Khirabdhii Tanaya Das Mohapatra*

Prof. Dhaneswar Das**

The child cannot wait, Right now is the time his bones are being formed, His blood is being made and His senses are being developed. To him we cannot answer tomorrow His name is today.

-Nobel Laureate Gabriel Mistral

Abstract: International adoption is a means of overcoming cultural and country barriers and a means of providing a home for children who are orphaned or abandoned. Adoption procedure in India is governed by Juvenile Justice (Care and Protection of Children) Act 2015 and Hindu Adoption and Maintenance Act 1956 and Inter country adoption is governed by Hague Convention on Inter country Adoption Act 1993. The nodal agency for bringing transparency and regulating the adoption process as per the legal framework is Central Adoption Resource Authority (CARA). All legal frameworks are there but challenges such as delay in the procedure, inconsistency in implementation and lack of uniformity in laws make the international adoption process inefficient. This critical overview of the legal framework is related to international adoptions in India in relation to international standards, and how the system fairs in addressing the needs of both children and adoptive parents. The Paper examines judicial interpretations, policy gaps and legislative deficiencies that hinder the adoption process. The article also looks at the CARA's role in promoting adoptions, the problem of cultural assimilation, legal protection against child trafficking and the rights of biological parents.

Keywords: International Adoptions, Central Adoption Resource Authority, Hague Convention on Intercountry Adoption, Child Welfare and Rights.

Introduction:

A Child is not only an individual, but rather a valuable asset to their nation, with the potential to radiate brilliance like to an unpolished pearl.¹ However, one of the most challenging aspects for a Child undergoing the adoption process is finding a family that really cares for and helps them. An orphan needs a suitable residence to call their own. Nevertheless, doing this task is not always straightforward. In order to adopt a Child, one must possess the readiness and capability to assume parental responsibilities. In the prominent case of *Lakshmi Kant Pandey v. Union of India*², the Supreme Court examined this issue and determined that international adoption may be considered as an option when suitable families cannot be located inside India. In a rapidly expanding society, the act of adoption has regrettably grown increasingly susceptible to unethical acts. This might potentially result in very detrimental consequences, such as engaging in the illicit trade of human beings. This article discusses the challenges associated with international adoption, such as issues

* **Lecturer Pravas Manjari Law College, Mining Road, Keonjhar, Odisha.**

** **Principal, Pravas Manjari Law College, Keonjhar, Odisha.**

¹ Asha Bajpai, *Adoption Law and Justice to the Child* (Bangalore: Centre for Child and the Law, 1996)

² AIR 1984 SC 469

related to identification, financial constraints, health complications, physical pain, and limited access to services for addressing these concerns.³

Adopting a Child involves removing them from their biological parents and any other potential adoptive individuals or locations. Subsequently, the Child assumes the legal status of being the legitimate offspring of their adopted parents and is entitled to all the privileges, responsibilities, and advantages associated with being a member of the adoptive household. This establishes a legal paternal bond between two individuals who are not biologically related. The phenomenon is referred to as the act of connecting. The United Nations and the Supreme Court have repeatedly affirmed that every Child need a residence. This is shown by the ratification of the UN Declaration of the Rights of the Child in 1989 and the signing of the Hague Convention on Inter-Country Adoption in 1933. Devoid of familial affection and nurturing, it becomes evident that optimal child welfare cannot be attained. Ultimately, the presence of a caring and affectionate family is crucial for a child's optimal physical and emotional development. Adoption may be categorized into two distinct groups: Intra-national adoption refers to the process of adopting a child inside the same country. Foreign adoption, often known as adoption from another nation. Intra-country adoptees refer to those who adopt domestically inside their own nation.⁴

The adoption procedure is established by the legislation of the child's country of origin. It ensures that the Child will be raised in a household that takes pride in its national and cultural heritage. Indian parents residing in India have exclusive eligibility to adopt children born in India. Nevertheless, Hindu law stipulates certain regulations about the actions that Hindu parents are permitted or prohibited from doing throughout the process of adopting a child. Please note that these regulations are only applicable to those who practice Hinduism. In 1989, the Indian government established the Central Adoption Resource Agency (CARA) with the aim of facilitating international adoption of children. The Adoption Regulations of 2017 became enforceable on January 16, 2017, as a result of the authorization granted under sentence (c) of Section 68 and clause (3) of Section 2 of the JJ Act 2015. The case of *Varsgha Sanjay Shinde & Anr. v. Society of Friends of the Sassoon Hospital and Others*⁵ was adjudicated by the Bombay High Court. According to the information provided, Indian parents are not permitted by law to lawfully adopt a Child who has already been chosen by a couple residing in another country. Consequently, parents who choose to adopt an Indian Child are not entitled to any preferential treatment or advantages based on the child's ethnicity. The court explicitly said that in this instance, preference should be given to Indian and foreign spouses residing overseas.

Historical Development:

Adoption practices have historically been substantially different from one culture to another as well as from one legal system to another. The adoption was deeply rooted in mystical connotation under the old Hindu law, and daughters were prohibited to be adopted, consequence of gender discriminative and social

³ S.K. Verma & M. Afzal Vani, *Legal Research and Methodology* (New Delhi: Indian Law Institute, 2nd edn., 2001) at 68.

⁴ Monica Chawla, "Hindu Law on Adoption: Need for Gender Justice Reforms," vol. 2, 2008 *Punjab University Law Journal* 176-182.

⁵ 10 ILR 1991 KAR 3543

norms of that time. Adoption laws in India were modernized by the Hindu Adoption and Maintenance Act of 1956, and both sons and daughters (though only Hindus) were able to be adopted.

However, unlike Islamic law, which believes that adoption contradicts its principles. The Quran forbids fabrication of fictitious family ties (*Nasab*) and prohibits that adopted children be considered as natural children and thus be given family names. Adoption laws throughout countries with Islam as a main religion are shaped by this perspective, further molded by cultural differences. Kuwait, for example, refused to agree to legal adoption in an initial draft of a UN declaration because of difficulties in identifying blood lineage. Many Islamic countries however, focus on foster care systems that offer children the care they need, while not changing their familial identity.

Modern adoption laws were first formalized in the Napoleonic Code of 1804, which introduced eligibility criteria for both adopters and adoptees. Adopters were required to be at least 50 years old, childless, and approved by the court. This legal framework served as a precursor to contemporary adoption practices.

International adoption, emerging prominently in the 20th century, refers to the legal transfer of parental rights of a child from one nation to adoptive parents from another. It addresses transnational, racial, and cultural challenges absent in domestic adoptions. The Leysin Conference (1960), organized by the United Nations, catalyzed the adoption of legislation in the United States and other nations to regulate this process. By fostering global integration, international adoption emphasizes the child's welfare while navigating complex legal, cultural, and ethical dimensions.⁶

Safeguards under Indian Constitution

The Indian Constitution cares a lot about the well-being of children and, under Article 15, Clause (3), lets the government make special rules for them. Article 23 says that both selling people and making them work for free are illegal. Article 24 states that people younger than 15 years old are not allowed to work in workshops, mines, or any other dangerous jobs. Clauses (e) and (f) of Article 39 say that the State must direct its policies against abusing children when they are very young, forcing them into jobs that are too young for them because they need the money, letting them grow up in a healthy way with freedom and respect, and keeping them from being exploited and abandoned in a material and moral way.

Legislative Prospective Of Adoption: Indian and International

The Adoption of Children Bill, 1972, and 1980 aimed to simplify adoption procedures but faced opposition from Muslims due to religious beliefs. While the bills respected individual choice, opposition persisted, as Islam prohibits adoption. The Supreme Court emphasized the need for legal uniformity, advocating adherence to court decisions.

⁶ Krushna Chandra Jena, "International Adoption of Children and Judicial Activism in India," vol. 2, 2008 *The All-India High Court Cases* 145.

1. Guardianship and Wards Act, 1890

Although our country does not have any laws that specifically allow or outline the steps that need to be taken in this situation, we must rely on the Guardian and Wards Act, 1890 to make adoptions possible. This old rule was made so that a guardian could be chosen to look after a child's person or things. It's being changed right now. "District court" in subsection 4 of section 4 means "a high court exercising its ordinary original civil jurisdiction." This is also what it means in the code of civil process. Section 4, Subsection (5), Clause (a) of the act says that the court can hear an application to name or declare someone as a guardian. The court is the district court with that power. Section 7, Subsection (1) says that if the court thinks it is in the child's best interests, it can proclaim someone to be a guardian or name someone as a guardian for the child's person and property, or both. Section 8 says that this type of order can't be given unless one of the four groups of people in sentences (a) through (d) is met. This is the group that includes the person who wants to be the guardian for the child and the group that includes the minor's friends or family. Part 9(1) of Section 9 says that a guardianship of the minor's person application is the type of form used to make foreign adoption possible. It needs to be sent to the district court in charge of the minor's normal home.

2. The Hindu Adoptions and Maintenance Act, 1956

Adoption in India is governed by personal laws rooted in religion. The Hindu Adoptions and Maintenance Act, 1956, permits Hindus, including Buddhists, Jains, and Sikhs, to adopt Hindu children under specific conditions. However, non-Hindus face restrictions, often opting for guardianship under GAWA. Despite 12.5 million orphans, rigid laws hinder widespread adoption.

3. Juvenile Justice (Care and Protection of Children Act, 2000

The Juvenile Justice Act, 1986, focused on neglected juveniles, requiring them to enter juvenile homes or behaviour agreements. Replaced by the JJ Act, 2000, it excluded provisions for juvenile offenders. The 2006 amendment introduced "adoption," and the 2007 JJ Rules designated civil courts to handle adoption and guardianship issues.

4. National Policy for Child 1974

In line with these statutory duties, the Indian government made a National Policy for the Welfare of Children. When this strategy is explained in terms of its goals, the first thing that is said is that the country's children are its most valuable resource. It is our job to watch out for them and help them. As a way to make sure that our children become strong, morally good people with the skills and drive that society needs, children's programmes should be a big part of our country's human resource development goals. Our goal should also be to give all children the same chances to grow and develop during their critical years. This will promote social justice and reduce inequality.

5. Present Procedure for Adoption In India

India's rules for adoption from other countries have changed since the CARA85 Guidelines were updated in 2011. The Indian government released Guidelines on July 4, 1989, through Resolutions from the Ministry of Welfare. These were meant to make it easier to follow the rules, policies, and procedures

for adopting a child that the Supreme Court of India set out in *L. K. Pandey v. Union of India*. The government announced the revised rules for the Adoption of Indian Children on May 29, 1995. These rules were based on the Supreme Court of India's rules and the Task Force's ideas. An ex-chief justice named P. N. Bhagawati led the Task Force. In the end, on March 18, 1999, the Indian government gave the Central Adoption Resource Agency power. It was named the Central Authority by the Ministry of Social Justice and Empowerment in 2003 so that it could carry out the Hague Convention of 1993 on the Protection of Children and Cooperation in Respect of International Adoption.⁷

6. Fundamental Principles Governing International Adoption

There are fundamental principles which govern the in-country and International adoption, such fundamental principles shall govern adoptions of children from India, namely:

- (a) The child's best interest shall be of prime importance while deciding any placement.
- (b) Preference shall be given to place the child in adoption within the country.
- (c) Adoption of children shall be guided by set procedures and in a time bound manner.
- (d) No one shall derive any gain, whether financial or otherwise, through adoption

International Instruments Governing International Adoption Laws

International instruments governing adoption laws aim to ensure the protection of children's rights while facilitating ethical and transparent adoption processes across borders. The Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, 1993 is the cornerstone of international adoption law. It establishes uniform legal standards to prevent child trafficking and ensure that intercountry adoptions occur in the best interests of the child. The convention mandates safeguard for ethical practices, such as the accreditation of adoption agencies, transparency in financial matters, and the prioritization of domestic adoption over international placement. The United Nations Convention on the Rights of the Child (UNCRC), 1989 also underpins adoption laws, emphasizing the principle of ensuring a child's right to family life and protection from exploitation. Articles 20 and 21 of the UNCRC highlight the importance of alternative care options for children deprived of a family environment, including adoption. Additionally, the Guidelines for the Alternative Care of Children (2010) by the United Nations General Assembly provide a global framework for ensuring that adoption practices align with child rights. These instruments collectively underscore the responsibility of states to prioritize the welfare of children while ensuring that international adoptions are conducted in an ethical, transparent, and regulated manner.

Judicial Development with Respect to International Adoption in India

International adoption laws in India were shaped by thorough judicial interpretations, ensuring children's best interest and promoting ethical practices. In cases of inter country adoption Indian courts strictly adhere to statutory provisions and international conventions. In the landmark judgment of

⁷ Seema Mohapatra, "Adopting an International Convention on Surrogacy—A Lesson from International Adoption," vol. 13 Issue 1, 2015 *Loyola University Chicago Law Review*.

*Laxmi Kant Pandey v. Union of India*⁸ laid the foundation for judicial oversight in international adoption. Hon'ble Supreme Court laid down detailed guideline to streamline adoption procedure realizing the potential risk of child trafficking. It highlighted the role of concerned agencies, compulsory background verification of prospective adoptive parents and strict monitoring in order to prioritize child's well-being. This ruling set a benchmark for safeguarding children from exploitation as well as promoting transparency and fairness in the process of adoption.

In subsequent developments under Juvenile Justice (Care and Protection of Children) Act, 2015 provisions for international adoptions were inserted into the Indian legal framework. The judiciary affirmed the provisions related to international adoption ensuring conformity with the Hague Convention on Inter-country Adoption, 1993 which India has ratified. Courts have constantly emphasized the importance of Central Adoption Resource Authority (CARA) in supervising adoption procedure and assuring that the adoptive parents meet prescribed eligibility criteria. The Judiciary has played an active role in cases of unwarranted delays and procedural shortcomings with the intention to provide a child a suitable family environment. These rulings underscore the judiciary's commitment to aligning domestic laws with global standards while prioritizing the welfare and rights of children in cross-border adoptions.

Concluding Observations:

Parenting is a natural outcome of our evolutionary history. Maternal instincts govern the birth, survival, and nurturing of offspring. Humans experience an extended period of infancy compared to other animals, potentially facilitating stronger maternal and filial bonds. This strong bond of affection, sensitivity, and dedication that mutually reinforces each other beyond the biological motivations for animal existence. Parents provide a comprehensive support system for their children to prevent them from growing up to be isolated individuals. Childhood and early childhood are critical periods for a child as they are when their personality is developing. A child's home serves as their primary environment for socialization and learning about the world beyond it. A husband and wife, as well as a father and child, who share a profound affection for each other, have a strong bond. This brings joy to the child's immediate family.

International adoption started to gain global prominence in the late 1960s. The quantity of adoptable children declined in numerous developed nations during the 1970s due to socioeconomic and demographic shifts. The stigma associated with being a single parent has decreased due to dropping birth rates, legalization of abortion, social acceptance of birth control methods, and the availability of social security and other benefits for families, particularly those headed by single parents. The number of children available for adoption by foreign parents dropped due to societal changes. Children from less affluent developing nations were exploited to meet the desire for children in wealthier and industrialized countries. International adoption has become a difficult issue due to economic factors.⁹

⁸ AIR 1984 SC 469.

⁹ Preet Singh and Suruchi Choudhary, "Hindu Law of Adoption: A Critical Study of Statutory Provisions," vol. 2, 2008 *Punjabi University Law Journal* 137-138.

Adoption is considered an ideal solution for children without parents and individuals seeking to raise children. Non-biological parents and children are required to adhere to specific social and legal regulations. The researcher is motivated to propose ideas to ensure the longevity and practicality of this perception once the appropriate course of action is determined.

1. **Comprehensive Guidelines:** Adoption laws should separate rules for domestic and international adoption, emphasizing the risks of child trafficking and exploitation in international cases.
2. **Criminal Infractions:** Strict penalties should be enforced for non-compliance with adoption regulations. Licensing criteria for adoption agencies must be rigorous to ensure ethical practices. Awareness programs for parents relinquishing children for adoption are crucial to prevent illegal practices.
3. **Licensed Counselors:** Adoption processes should involve licensed professionals such as psychologists, social workers, or lawyers familiar with the receiving country's laws.
4. **Verification Processes:** Before initiating international adoptions Mutual agreements with receiving countries must be verified to ensure transparency.
5. **Child's Welfare Priority:** According to the UN Convention on the Rights of the Child, the State Adoption Resource Authority (SARA) should put the welfare of the child above preferences of the foreign adoptive parent or agency.
6. **Prohibit Money Transfers:** Donations and fee based model should be banned from adoption services and government funding should replace these practices to get rid of conflict of interest.
7. **Post-Adoption Support:** Health facilities, financial support and other assistance in locating their birth families should be provided for the adult adoptees. To help adoptees who would like to return to India, programs must be developed for repatriation.
8. **Role of CARA:** It would be the responsibility of CARA to develop programs for temporary and permanent return of adult adoptees to India. It should also be in place to review adoption outcomes on a regular basis and institute post adoption support services for special need children.
9. **Inclusivity in Adoption:** Adoption laws should be formulated such that they explicitly include same sex couples and transsexuals as well as adoptive procedures with informed consent for children who are old enough to understand what adoption is about.

CORPORATE CRIMES AND ITS EFFECTS ON THE ECONOMY

Abhilasha*

Ankit Kumar*

Abstract: Corporate crimes have become a significant challenge to the economic growth of a nation. The increase in number of such criminal activities impacts not only businesses but also individuals and society as a whole. One of the challenges in tackling corporate crime is its broad areas, which complicates governmental efforts to address the issue effectively. However, legislative measures, such as the Companies Act of 2013 and Criminal laws have been implemented to combat these crimes. Regulatory bodies also play a crucial role in managing and resolving issues associated with criminal activities in corporate world. Advancements in technology and artificial intelligence have enhanced their ability to detect and investigate misconduct by companies. By utilizing these tools, authorities can more effectively identify unethical practices and enforce compliance, ultimately fostering a healthier economic environment for the businesses to have a fair play platform to perform.

Keywords: Corporate Crimes, Economic Depression, Criminal Activities, Legislation.

Introduction:

While industrialization creates opportunities for increased economic growth and international cooperation, it also brings challenges that can be exploited for illicit activities. The desires for profit and power gave influences to most crimes in corporate world. These opportunities also brought and gave birth to different kinds of crimes related to corporation. The practice has been occurring since the 14th century or even earlier. Several different theories have been given by the criminologists regarding different kinds of corporate crimes. But the first formal expression was made by criminologist and sociologist Edwin H. Sutherland in the year 1939 in a presidential address to the American Sociological Association¹. The Australian Criminologist John Braithwaite defined corporate crime as “the conduct of a corporation or employees acting on behalf of a corporation, which is prescribed and punishable by law². The term corporate crime is so vague that it covers wide range of criminal activities. As interpreted by the International Monetary Fund (IMF), this concept covers criminal activities related to money laundering, fraud bribery tax evasion and corruption. Corporate crimes lead to economic depression through various modes such as reduce in investment by the investors, public distrust in the corporation and job cuts in the markets. There has been an exponential increase in the number of corporate crimes after the COVID pandemic. The financial strain and stress caused by COVID-19 led both individuals and companies to engage in unethical practices. The challenges faced by regulatory bodies during the pandemic created opportunities for corporations to pursue their own unethical goals and seek greater profits. Corporate crimes possess a great threat to the welfare of the country. So, it becomes duty for the state to protect against human right abuses committed by corporate bodies. To address these issues the state should provide proper legal framework, adequate regulations and a conducive environment where the growth is made without harming the harmony in the society.

*Ph.D. Scholar, Faculty of Law, DU

*LL.M, Faculty of Law, DU

¹ Geis Gilbert Geis, *White- Collar Criminal : The offender in Business and the Professions*. (New York : Atherton Press 1968) at 21

² John Braithwaite, *Regulatory Capitalism: How it Works, Idea for Making It Work Better*. (Edward Elgar Publishing 2008)

Corporate Crimes: Types and Effects on Economy

The term “corporate crime” is a broad and multifaceted concept engaging with a wide range of illegal activities committed by corporations. The diverse nature and the complexity of corporate crimes make it difficult to categorise precisely. However, here are some prevalent and most common types to illustrate the scope of corporate crimes.

Tax evasion: Tax evasion may lead to detrimental impact and can be a cause for decrease in Government revenues. It will result in budget shortfall and will limit the government funding in essential public services such as infrastructure, education, health and other services.

Market rigging: The mislocation of resources and misinformation may not reflect the true economic value of companies and may bring lots of distortion among the companies. It will create an unfair playing field for the companies, especially the small companies.

Money Laundering: Generally, this process involves the manipulation of funds from legitimate economic activities to illicit purposes. This may lead to loss of trust among the public and investors which will directly dampen overall investment and economic growth.

Embezzlement: Companies involved in embezzlement may have to go through many problems which can directly impact on the company’s ability to work effectively and efficiently. This can slow down the economic growth and investments leading to economic depression.

Bribery: Bribery is one of the common types of corporate crimes, it kills merit when decisions are made based on bribery. It undermines the trust of public and other companies which is crucial for the development and growth of the economy.

Counterfeiting: Counterfeiting may lead to loss of revenue and can create unfair competition for legitimate businesses impacting the overall economy.

Major Scams and Relevant Case Laws:**LIC Mundra Scam (1962)³**

This is the first scam after the independence of India. LIC invested Rs1.24 crore in the year 1957 into six companies. All these companies belong to big businessman Mr. Hari Das Mundra and all these six companies were fake. Even the investment board of LIC was not aware about this investment. It was done without their approval of LIC board. At the time of investment by LIC, Mundra company was in huge loss. Then question arose why LIC invest such a big amount in such a case who is going on loss even without the permission of LIC Board. Mr. Mundra came in Mumbai in the year 1950 where he gets introduced to Dalal street of that time or stock market. Where he sees how people with some thousands/ lakhs makes crore and therefore, he himself work there as jobber and works as a trader. While doing, his work goes so well that he slowly starts shares rigging and also become operator of some shares. He also become expert in a form of trading called circular trading. Now Mundra was not only manipulating but also, he was doing share rigging of his own company shares and also floating fake shares. The Supreme Court in this case held that Mr. Mundra is liable for 22 years imprisonment and money of 55 lakh people who have insurance in that LIC company was involved.

³ *Life Insurance Corporation of India v. Hari Das Mundhra* (1962) Allahabad HC

Satyam Scam (2009)⁴

In 1987, B. Ramalingum Raju with his brother opens a company i.e. Satyam computer in the year 1990-91, this company listed under BSE (Bombay Stock Exchange). Satyam computer became one of the fastest growing company. In parallel, real state rate was also increasing with very high rate which are attacking the Raju. As a result of this, B. Raju start purchasing property in the name of his family members and his own company i.e. Maytes infrastructure and Maytes properties. When B. Raju need more money to purchase the property then he started to manipulate the financial statement. Basically, he tried to misrepresent the accounts of the company in front of the directors, shareholders of the company and also tried to mislead the market. He shows that his company is growing more and more due to this the rate of interest, the value of share was increased. So, both the brother decides to sell their share because at that time the price of share was too high. With the passage of time the difference between the fake figure of account and original figure of account was too high. In the year 2008, due to the recession, the price of share was decline. All the plan of B. Raju to fill the gap of fake figure and original figure was flop. In the year 2009, B. Raju make a confession that from the last many year Satyam computer make misrepresentation of his account. In this case Hon'ble Supreme court held that they were liable for 7 yrs. rigorous imprisonment. Since then, after every 10 yrs., every company is required to change their auditor.

Harshad Mehta Scam (Biggest stock market scam) (1992)⁵

In 1984, Mehta was able to become a member of the Bombay Stock Exchange as a broker and established his own firm called Grow More Research and Asset Management. With the passage of time he flourishes very well in the market of stock exchange. Many govt banks take money from Mr. Mehta and they kept their security (in the form of receipt) to him. And Mr. Mehta sell their security to some other bank to take money from them and gave that money to some other bank. All these bank transactions are connected with each other through broker. Mr. Mehta by showing false receipt to bank, take money from the bank and put all the money into the stock market. In the year 1992, he was exposed by one journalist. In this case Hon'ble Supreme court held that he was liable for 5 yrs. punishment.

Sahara Scam (*Sahara v. SEBI*)⁶

Subrata Roy is the managing worker and chairman of Sahara India Pariwar. This company deal under various fields such as finance, infrastructure & housing, media and entertainment, consumer merchandise, retail venture, manufacturing and information technology. The matter 1st time came to light when CA Roshan Lal sent a notice to National Housing bank (NHB) to look into the irregularities of the housing bonds issued by the two companies namely, Sahara India Real estate Corporation and Sahara Housing investment corporation. SIRECL and SHIC issued optionally fully convertible debenture (OFCDs) through subscriptions fro5m investors with effect from 25 April 2008

⁴ *Satyam Computer Service Ltd. v. Serious Fraud Investigation Office* (2009) 10 SCC 524

⁵ *Harshad Shantilal Mehta v. State of Maharashtra* (1992) 2SCC 524

⁶ *Sahara Real Estate Corporation Ltd. v. Security Exchange Board of India* (2012) 10 SCC 603

up to 13 April 2011. As per Sahara issued OFCDS was private placement and it comes under the purview of ROC. NHB forwarded the complaint to SEBI due to lack of authority to pursue the case. SEBI reviewed the draft Red Herring Prospectus issued by both the company. In this case Hon'ble supreme court held that Sahara will refund all deposits collected with a 15% interest rate.

2G Spectrum Scam (Central for Public Interest Litigation v. UOI (2012) ⁷

In May 2009, A Raja takes over as Telecom Minister. In the year 2007 the process of allotment of 2G spectrum was initiated by Department of Telecom (DoT). On Sept 25, 2007 telecom ministry issues press note fixing deadline for application. After this notice, PM writes to Raja to ensure fair license allocation and proper revision of fee. Raja writes to PM allegedly rejecting many of his recommendations. Finance ministry writes to DoT raising concerns over the procedure adopted (first come and first serve instead of auction). DoT again and again revise the last date of application. At the end they preponed the last date of application form. In the year 2008, all those companies who purchase the spectrum sell those spectrums at the higher rate to some other company. On this, CVC directs the CBI to investigate the matter. In the year 2011, Delhi High court sets up special court to deal exclusively with 2G cases. In this case Hon'ble Supreme court cancelled 122 2G spectrum licenses issued in 2008, citing arbitrary and unconstitutional allocation. Due to this, our government has to face huge loss to our economy. As per the CAG report, the estimating a notional loss of Rs 1.76 lakh crore faced by the country.

*Manohar Lal Sharma v. The Principal Secretary & Others*⁸

Coal gate Scam (Coal allocation Scam) Govt of India allot coal mine to the public and private company. Through the CAG report of 2012, they come to know in the year of 2004 to 2009, govt of India allot the coal deposit through illegal method. As per CAG report, our country faces the economy loss of approximate of Rs 10.7 lakh crore (as per in-situ coal). But in the final report of CAG, he changed the amount of financial loss i.e. 1.86 lakh crore (as per extractable coal). As per CAG report, the process followed by the govt was not legal as they didn't sell the coal deposit of competitive bidding or through open tender. But at that the time, the PM refused to accept the allegation of CAG. Then BJP govt write a complaint to CVC to look this matter. Then, CVC ask the CBI to collect the information on this matter. As per CBI Report, the company who buy the coal deposit, they misrepresent their financial account and they does not mention about old coal allocation and they also refused to give any information about old coal mines. In this case Hon'ble Supreme court cancelled 214 out of 218 coal allocation which was happened between the year 1993 to 2009. And also, to pay Rs 295 per Ton on the coal which are extracted. As per final report of CAG, our country face huge loss i.e. Rs 1.87 lakh crore.

Relevant Legislations:

1. Bharatiya Nyaya Sanhita, 2023⁹

Section-2(26) of Bharatiya Nyaya Sanhita, 2023 defines Person which includes any Company or association or body of persons, whether incorporated

⁷ *Central for Public Interest Litigation v. UOI (2012)* 3SCC 1

⁸ *Manohar Lal Sharma v. Principal Secretary and Ors (2014)* 2 SCC 532

⁹ Indian Penal Code, 1960(Act 45 of 1860), s- 9

or not. Indian Penal Code provides for the general criminal law provisions for punishing individuals and companies involved in fraudulent activities.

2. The Companies Act, 2013¹⁰

Companies Act talk about enforces corporate governance standards, financial reporting norms and auditing requirements to protection shareholders etc. Section- 447 deals with corporate fraud, including severe penalties for those committing fraudulent activities within a company. Section 448, punishes those providing false statements or omitting critical information from financial reports.

3. The Prevention of Corruption Act, 1988¹¹

The issue of corruption is very dangerous to nation. The Sanathan Committee Report, 1964 defines the problem of corruption as a complex problem having its roots and ramification in the society itself as a whole. It covers corruption in both public and private sectors, including corporate bribery. The 2018 amendment introduced stringent penalties for bribing public officials and broadened the scope to include private-sector corruption.

4. The Prevention of Money Laundering Act (PMLA), 2002 ¹²

In India, large-scale money laundering has been occurring for the past few decades, leading to a sharp rise in socio-economic crimes. Money laundering refers to the process of transforming black or tainted money into legitimate, untainted funds. Thus, the main purpose and the objective of this act is to prevent Money Laundering. It targets financial crimes linked to corporate activities, such as money laundering and embezzlement. Ensures that companies involved in illegal financial transactions are investigated, and penalties are imposed.

5. The Securities and Exchange Board of India (SEBI) Act, 1992¹³

It regulates the securities market to prevent corporate fraud like insider trading and market manipulation. SEBI oversees stock exchanges and companies to ensure transparency and fairness in financial dealings.

6. The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015¹⁴

This Act focuses on bringing back undisclosed foreign income and assets, often linked to corporate crime Imposes penalties on those evading taxes through hidden offshore accounts.

7. The Fugitive Economic Offenders Act, 2018¹⁵

In 2018 the government of India passed the Fugitive Economic Offenders Act, 2018 which seeks to punish on economic offenders who flee the country to escape legal consequences after committing large-scale corporate crimes, such

¹⁰ The Companies Act, 2013 (Act 18 of 2013), s-447,448

¹¹ The Prevention of Corruption Act, 1988 (Act 49 of 1988)

¹² Prevention of Money Laundering Act, 2002 (Act 15 of 2003)

¹³ The Securities and Exchange Board of India Act, 1992 (Act 15 of 1992)

¹⁴ Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (Act 22 of 2015)

¹⁵ The Fugitive Economic Offenders Act, 2018 (Act 17 of 2018)

as fraud or financial scams. The act includes provisions that grant the government the authority to seize the property of any economic offender in India who escapes to another country.

8. The Insolvency and Bankruptcy Code (IBC), 2016¹⁶

It provides for the legal framework for the resolution of corporate insolvency. Ensures that companies that commit financial mismanagement, leading to insolvency, are subject to liquidation or restructuring, thereby protecting the interests of creditors and preventing economic disruptions.

Government Actions to Address Corporate Crimes:

Awareness-Maintaining ethical standards in business practices is crucial and can be effectively supported through various initiatives. Public awareness campaigns play a key role in highlighting the importance of moral values in business. Educating both employees and employers about business ethics and the principles of accountability is essential. Such educational efforts help ensure that all parties understand their responsibilities and the expectations for maintaining a fair and transparent business environment.

Legal Codification-Legal codification creates a clear, comprehensive, and organized legal framework, enhancing the efficiency and effectiveness of legal proceedings. It simplifies the process for the public to understand their rights and obligations under the law, fostering greater legal awareness and compliance. Codification aids judges by providing a structured reference, which promotes uniformity in the application and interpretation of laws. This systematic approach helps ensure that legal processes are consistent, accessible, and aligned with current legal standards.

Application of Laws-Besides codifying laws is important, their application is equally important, for addressing any kind of crime. Effective enforcement of codified laws ensures that legal standards are upheld and that rigorous measures are taken against corporate crimes. Without proper application, even well-drafted laws may fail to deter or address illegal practices. So, a robust and consistent application of law is essential for effectively combating corporate crimes.

Strict Regulatory Controls-Enforcing stringent regulations can be effectively managed by various government agencies tasked with addressing corporate crimes. Agencies such as the Enforcement Directorate, the Central Bureau of Investigation (CBI), the Securities and Exchange Board of India (SEBI), and the Central Vigilance Commission (CVC) play crucial roles in tackling these offenses. Each of these bodies contributes by investigating, monitoring, and taking necessary actions against corporate misconduct, thereby ensuring adherence to laws and maintaining a fair and transparent business environment. Their coordinated efforts are essential for upholding regulatory standards and combating corporate crime.

Concluding Observations:

As latest report of PwC's Global Economic crime and fraud survey (GECS) 2022¹⁷ suggest that 52% of Indian organizations experienced some frauds or

¹⁶ The Insolvency and Bankruptcy Code, 2016 (Act of 31 of 2016)

other economic crime within 24 months. This shows an alarming situation that there is need to take these issues very seriously. However, the statutory bodies under parliament enactment such as Reserve Bank of India, Competition Commission of India, Securities Exchange Board of India, Insurance Regulatory and Development Authority in India have been taking measures to deal with these kinds of corporate crimes. The use of Artificial Intelligence (AI) can be a game changer in detecting the issues related to corporate crimes. It can assist regulatory bodies to identify the information more easily and address them quickly and effectively. The IMD's Global Competitiveness Index¹⁸ reveals that India is currently ranked 40th. This represents a drop of three positions from the previous year, though the country has shown improvement compared to its 43rd place ranking from 2019-2021. The IMD's World Competitiveness Centre (WCC) report found that India progressed in government efficiency, but lagged in business efficiency, infrastructure, and economic performance. A higher competitive index reflects a more favorable business environment, which attracts both domestic and foreign investment and stimulates innovation. This results in promoting economic growth and reduces the likelihood of economic depression. Corporate crimes have surged in India, causing significant concern for both individuals and corporations. While regulatory bodies have been effective in addressing these issues, political interference has occasionally undermined their effectiveness, impacting the country's growth. To improve the situation, greater transparency and more effective methods must be implemented to ensure proactive measures are taken to prevent corporate crime.

¹⁷ PwC's Global Economic Crime and Fraud Survey "*Protecting the perimeter: A new frontier of platform fraud*" (2022)

¹⁸ International Institute for Management Development, " *World Competitive Competitiveness Index Report*", 2023

ISLAMIC VIEWS ON TALAQ: LEGAL, SOCIAL, AND RELIGIOUS IMPLICATIONS

Lodha Abedabehen Shabbriali*

Dr. Sandeep Gehlot*

Abstract: Talaq, the Islamic practice of divorce, has been a subject of considerable religious, legal, and social scrutiny. This article explores the multifaceted nature of talaq, examining its legal foundations, social implications, and religious significance in Islam. The paper highlights the contrast between traditional interpretations of Islamic law and contemporary reforms, particularly in the context of gender equality and human rights. It also investigates the role of talaq in Muslim-majority societies and the social stigma often associated with divorced women. This study aims to offer a comprehensive understanding of talaq, its implications for modern Islamic family law, and the ongoing legal reforms in various countries. The research includes analysis of scholarly opinions, legal perspectives, and statistical data on the practice of talaq, contributing to the discourse on Islamic divorce law and its future.

Keywords: Talaq, Islamic Law, Divorce, Sharia, Gender Equality.

Introduction:

Talaq, an essential aspect of Islamic law, refers to the formal dissolution of marriage by the husband. This practice is deeply embedded within Islamic jurisprudence and has a long history that stretches back to the time of Prophet Muhammad. While talaq is permitted within Islam, its practice has been a point of contention, particularly in modern-day societies where gender equality and women's rights are prominent issues. The controversy around talaq has intensified with the introduction of legal reforms in Muslim-majority countries and international discussions about the rights of women in the context of divorce¹. This article seeks to examine talaq not only as a religious and legal practice but also as a social institution that affects millions of Muslim families worldwide.

The legal basis for talaq is derived primarily from the Quran and Hadith, where guidelines for divorce, including the waiting period (iddah), the required pronouncement of talaq, and the process of reconciliation, are laid out. However, contemporary legal systems in many Muslim countries have grappled with reforming talaq practices to address criticisms, especially regarding its misuse or misinterpretation.

This study aims to provide a balanced exploration of the practice, reviewing traditional Islamic views on talaq, as well as modern perspectives that challenge and reform these views. The analysis includes various legal, cultural, and social dimensions of talaq and provides a comparative view of how different Muslim-majority nations have dealt with the issue.

*Research Scholar, Faculty of Law, Madhav University, Pindwara, (Sirohi), Rajasthan – 307026. Email: abedaholda@gmail.com

*Research Supervisor, Associate Professor, Faculty of Law, Madhav University, Pindwara, (Sirohi), Rajasthan – 307026. Email: sandeepgehlota@gmail.com

¹ Yusuf Al-Qaradawi (Author), Ahamd H. Zaki (Translator), *The Lawful and the Prohibited in Islam*, available on <https://thequranblog.wordpress.com/wp-content/uploads/2010/06/the-lawful-and-the-prohibited-in-islam.pdf>, p167.

Description:

Talaq, in its simplest form, is the husband's right to divorce his wife under Islamic law. However, its practice varies significantly depending on geographical location, legal frameworks, and socio-cultural norms. Islamic scholars have historically differed on the proper interpretation and execution of talaq, with different schools of thought within Sunni Islam (Hanafi, Shafi'i, Maliki, and Hanbali) offering their distinct legal perspectives on the process².

Traditionally, talaq is seen as a right reserved for the husband. However, this practice is not without limitations. Islamic law stipulates a waiting period, known as *iddah*, which is designed to ensure that the woman is not pregnant and to provide a period for potential reconciliation. Furthermore, the Quran advocates for fairness and justice in the treatment of wives during the divorce process. For example, Surah At-Talaq (65:2) explicitly mentions the need for "taqwa" (piety) and fairness when pronouncing talaq. In addition, the Hadith of the Prophet Muhammad condemns the practice of Talaq al-Bid'ah, or instant triple talaq, as a wrongful practice that can lead to social injustice³.

However, the practice of triple talaq (the immediate pronouncement of talaq three times in one sitting) has remained a controversial issue, particularly in countries like India, Pakistan, and Bangladesh. The practice has been widely criticized for its immediate and irrevocable nature, which leaves no room for reconciliation or due process. In response to this, India has recently enacted the Muslim Women (Protection of Rights on Marriage) Act, 2019, which criminalizes the practice of triple talaq and aims to provide more equitable solutions to Muslim women seeking divorce.

The role of women in the context of talaq has also been a subject of significant debate. In contrast to men, women in many Islamic traditions have not had the same rights to initiate divorce. However, the legal provision of *khula*, which allows women to seek divorce from their husbands by returning the dowry, has provided an alternative pathway for women in certain situations. Yet, the extent to which women have access to *khula* remains inconsistent across different regions⁴.

Social and cultural factors play a significant role in shaping how talaq is viewed and practiced. In many societies, divorced women are subjected to social stigma, which exacerbates their financial and psychological hardships. This societal bias can often prevent women from pursuing divorce, even when they have legitimate grievances.

Research and Statistics (Tables & Charts):

To provide a more comprehensive understanding of Talaq in the modern context, this section will present statistical data, trends, and insights into the impact of legal reforms across various Muslim-majority countries. These

² Abdur Raheem Kidwai, *Women in Islam: What the Qur'an and Sunnah Say*, Kube Publishing Ltd UK. 2020 p. 25.

³ Mathilde Loujayne, *Big Little Steps: A Woman's Guide to Embracing Islam*, Kube Publishing Ltd UK. 2020 p. 158. 1.

⁴ Khan, S. "Social Stigma and Divorce in Islamic Contexts", Vol. 12(2), 2015, *Journal of Gender Studies*, 134-149, p 136.

statistics will cover divorce rates, legal reforms, and socio-cultural aspects of talaq.

Table 1: Number of Talaq Cases in India (2010-2020)

Year	Number of Cases	Percentage of Triple Talaq Cases
2010	12,000	30%
2015	15,500	45%
2020	8,500	5%

Chart 1: Trends in Legal Reforms on Talaq in Muslim-Majority Countries (Bar chart showing the timeline of legal reforms in countries like India, Pakistan, and Bangladesh)

2. Talaq Cases in India (2010-2020)

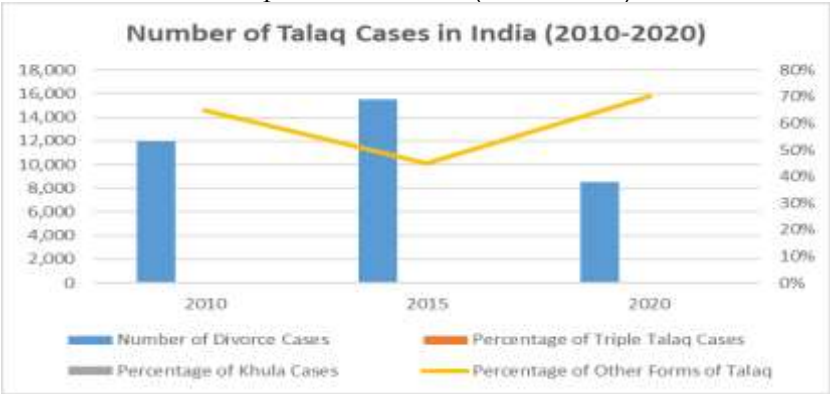


Table 3: Number of Talaq Cases in India (2010-2020)

Year	Number of Divorce Cases	Percentage of Triple Talaq Cases	Percentage of Khula Cases	Percentage of Other Forms of Talaq
2010	12,000	30%	5%	65%
2015	15,500	45%	10%	45%
2020	8,500	5%	25%	70%

Analysis:

- The table reflects a significant decline in the percentage of triple talaq cases, especially after the Muslim Women (Protection of Rights on Marriage) Act, 2019 was passed, which criminalized the practice.
- Khula cases have seen an increase, particularly after legal reforms aimed at granting women more autonomy in divorce proceedings.
- The overall number of talaq cases has dropped, likely due to the growing awareness of legal alternatives and protections against arbitrary divorce.

LEGAL REFORMS IN MUSLIM-MAJORITY COUNTRIES: A COMPARATIVE OVERVIEW:

- India: After the 2019 legislation criminalizing triple talaq, the country saw an increase in the number of reforms aimed at protecting women's rights in divorce.
- Pakistan: Pakistan introduced the Muslim Family Laws Ordinance (1961) and continued implementing changes throughout the 2000s, focusing on restrictions to talaq.
- Bangladesh: A gradual shift towards more gender-inclusive reforms, especially after the Women's Development Policy of 1997.

- Egypt and Saudi Arabia: Both countries introduced reforms focused on ensuring mutual consent in divorce cases and enhancing women's protection through family courts.

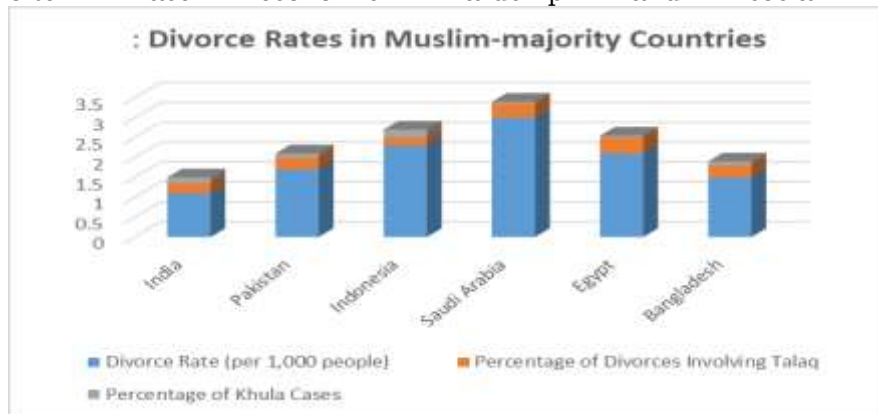
DIVORCE RATES IN MUSLIM-MAJORITY COUNTRIES AND TALAQ IMPACT

Table 2: Divorce Rates in Muslim-majority Countries (2015-2020)

Country	Divorce Rate (per 1,000 people)	% of Divorces Involving Talaq	Percentage of Khula Cases	Social Impact on Divorced Women
India	1.1	25%	15%	Stigma, financial hardship
Pakistan	1.7	30%	10%	Legal challenges, societal bias
Indonesia	2.3	20%	20%	Social acceptance increasing
Saudi Arabia	3.0	35%	5%	Cultural stigma, legal protection
Egypt	2.1	40%	5%	Cultural stigma, financial impact
Bangladesh	1.5	30%	10%	Social stigma, emotional stress

Analysis:

- Pakistan and Saudi Arabia report a higher percentage of talaq-related divorces, with Saudi Arabia showing the most significant use of Talaq in the divorce process.
- Indonesia has seen the lowest percentage of talaq-based divorces, likely due to the more progressive nature of Islamic Family Law in the country, which emphasizes mutual consent and mediation.
- The social impact on divorced women is significant, especially in countries with high talaq rates like India and Saudi Arabia, where divorced women often face economic hardship and social exclusion.



PUBLIC AWARENESS AND LEGAL PROTECTIONS FOR DIVORCED WOMEN:

Chart 2: Public Awareness of Legal Protections for Divorced Women (Survey Data 2019-2020)

- X-axis: Countries (India, Pakistan, Bangladesh, Egypt, Saudi Arabia)
- Y-axis: Percentage of Population Aware of Legal Protections (Scale: 0% - 100%)
- Bars: Public awareness levels in each country about legal rights for divorced women, including the right to alimony, child custody, and khula access.

Analysis:

- In countries like India and Pakistan, public awareness about women's rights in divorce has improved, particularly with the introduction of new laws.
- Bangladesh shows the highest levels of awareness, possibly due to public campaigns and gender equality efforts.
- Saudi Arabia has made progress in awareness but still faces challenges due to traditional attitudes surrounding divorce and women's independence.

5. Impact of Triple Talaq Ban on Divorce Trends in India

Table 3: Effect of the Triple Talaq Ban on Divorce Rates in India (2019-2021)

Year	Number of Divorce Cases	Triple Talaq Cases (Before Ban)	Post-Ban Divorce Trends
2019	8,500	2,000	Decrease in divorce cases
2020	7,500	500	Increase in Khula cases
2021	7,000	0	More women seeking divorce via mutual consent

Analysis:

- The Triple Talaq Act, 2019, led to an immediate decline in the number of instant talaq cases, highlighting the effectiveness of legal reforms in curbing the misuse of talaq.
- Khula cases increased as women gained more confidence in seeking divorce through legal avenues rather than relying on unilateral talaq.
- The post-ban trends show a shift towards more structured and just divorce procedures, with an increase in mutual consent divorces and a reduction in arbitrary divorces.

Above demonstrates a clear trend toward legal reform and greater protection of women's rights in divorce cases within Muslim-majority countries. Statistical evidence from India, Pakistan, and other countries shows that while Talaq remains prevalent, the increasing legal protections and reforms, such as the Triple Talaq Act in India, have significantly impacted divorce practices. Additionally, the rise in khula cases and mutual consent divorces signals a shift toward more equitable solutions for women. Public awareness campaigns and evolving legal frameworks are gradually reducing the social stigma associated with divorce, which has long been a barrier to women's social acceptance post-divorce⁵.

The charts and tables help contextualize the ongoing shifts in Talaq practices, offering a clearer view of the impact of reforms and the evolution of divorce trends in the Islamic world. Future studies should continue to monitor these developments, focusing on further reducing the gender gap in divorce law and increasing gender equality in Islamic family law.

Governments in Muslim-majority countries should introduce more consistent legal reforms to ensure women's rights in divorce cases. There is a need for increased public awareness on the legal and social rights of divorced women to reduce the stigma. Islamic legal schools of thought should consider gender-sensitive interpretations of Islamic law to promote gender equality.

⁵ Hoque, Ridwanul, and Md Morshed Mahmud Khan. "Judicial activism and Islamic family law: a socio-legal evaluation of recent trends in Bangladesh." Vol 14, no.2, 2007, *Islamic Law and Society*, 204-239, at 235.

Reform the khula process to make it more accessible to women and ensure their autonomy in divorce cases.⁶

Encourage further academic research into Islamic Family Law to assess the ongoing challenges women face in talaq-related cases. Advocate for international legal standards that respect both Islamic principles and women's rights. Promote community-level dialogue to address social stigma and promote gender equality within Muslim communities⁷.

Concluding Observations:

Talaq, as an integral part of Islamic family law, has undergone significant scrutiny and reform in recent years. While traditional interpretations of talaq permit a husband to unilaterally divorce his wife, modern-day reforms, particularly in Muslim-majority countries, seek to balance Islamic teachings with the rights and dignity of women. Legal reforms, such as the criminalization of triple talaq in India, demonstrate a progressive shift toward ensuring the protection of women's rights in divorce matters. However, challenges remain in ensuring that women have equal access to divorce and protection from social stigma. In light of these challenges, future reforms should focus on creating a more equitable system that recognizes the diverse needs of women while maintaining the integrity of Islamic principles.

⁶ Ali, Mohd Akil Muhamed, "Islamic Values in the Design of Residential Internal Layout" Vol. 4, 2022 , International Journal Academic Research in Business and Social Sciences 1728-1740, p.1735.

⁷ Shahid, Ayesha. "Post-divorce maintenance for Muslim women in Pakistan and Bangladesh: A Comparative Perspective", Vol. 27, no. 2, 2013, International Journal of Law, Policy and the Family, 197-215, p. 201.

ROLE OF JUDICIARY IN PROTECTING WOMEN WORKERS RIGHTS

Kasturi Kumari*

Prof. (Dr.) Vidya Shaktawat*

Abstract: The role of the Indian judiciary in protecting the rights of women workers has been extremely important and influential. The judiciary has given many important decisions from time to time to protect the rights of women workers in India, which are not only necessary to ensure the labor rights of women but also strengthen their place in society. The judiciary has protected the rights of women workers under the Constitution's right to equality, right against discrimination and right to life and personal liberty. The Supreme Court has taken concrete steps against discrimination at the workplace, especially for women workers in the unorganized sector.

Keyword: Women workers, judiciary, workplaces, harassment of women, unorganised sector, etc.

Introduction:

Judiciary has an important role in protecting the human rights of women workers. The judiciary not only monitors the observance of the law but also ensures that women enjoy their rights and dignity and are protected from exploitation, harassment, and discrimination. Especially to protect the rights of women workers, the judiciary has given many historic and important judgments, which have been helpful in protecting their rights and empowering their position at the workplace. The judiciary has not only interpreted the Constitution and labour laws but also set new standards for the protection of the rights of women workers. The decisions of the Supreme Court and the High Courts have taken important steps towards giving women equal opportunity, safety, respect and rights at the workplace. The decisions of the Supreme Court and High Courts have taken significant steps towards providing equal opportunities, security, respect and rights to women at the workplace, as follows.

Constitutional Protection of Working Rights for Women: The judiciary has clarified that women enjoy constitutional protection of working rights, and these rights are not limited to physical labour, but mental and social safety at the workplace is also important. The judiciary has interpreted women's working rights under Article 14 (right to equality), Article 15 (right to freedom from discrimination), and Article 39(a) (equal pay for equal work) of the Constitution. In *Naresh Sharma v. Union of India*¹. In this case, the Court ensured the right to equal pay for women. In this judgment, the Court emphasized the need for equal pay for equal work for working women and recognized it as a right of women workers under Article 14 (right to equality) and Article 39(d) (for equal pay) of the Constitution.

* Research Scholar, Faculty of Law, Madhav University, Pindwara, (Sirohi), Rajasthan – 307026.

* Research Supervisor, Professor, Faculty of Law, Madhav University, Pindwara, (Sirohi), Rajasthan – 307026.

¹ (2014) 9 SCC 142.

In *State of India v. State of Uttar Pradesh*² In this judgment, the Court interpreted the constitutional right of women workers to safety and security at the workplace. The Court ordered to ensure that women are free from harassment and exploitation at working places and are provided equal opportunities.

The Constitutional protection of working women workers has been strengthened and equality, safety and respect for women at the workplace has been ensured. The judiciary has properly used various articles of the Constitution to protect the rights of women, which is essential to protect them from harassment, discrimination, and exploitation.

Right against Sexual Harassment: The need for protection of women workers from sexual harassment and exploitation at the workplace has been clarified by the judiciary through several important judgments. Notably, in the *Vishaka case*³ the Supreme Court issued guidelines for protection against sexual harassment of women. In this judgment, the Court held that ensuring a safe environment for women at the workplace is not only a legal but also a constitutional obligation. The Supreme Court issued guidelines to prevent harassment of women at workplaces, known as the "Vishaka Guidelines". The court said that until the Parliament makes a law against sexual harassment, it will be mandatory to follow these guidelines.

*Muluri v. United Foods Workers*⁴, in this case, the Supreme Court protected the labour rights of women and said that women workers should be provided special protection, especially in jobs where they may be subjected to physical and mental harassment. The court recommended necessary measures for the safety of women at the workplace. *Rajeev Kumar v. State Government*⁵, in this judgment, the Court gave special guidelines to the State Governments to protect the labour rights of women. It focused on the responsibility of ensuring safe and respectful workplace for women.

*Laxmi v. State*⁶, the Court gave directions regarding the health and safety of women workers and said that special protection should be provided to working women, especially in areas where they may be subjected to physical and mental harassment.

Maternity benefits and health protection: The judiciary has also given important decisions regarding the maternity rights and health protection of women workers. Under the Maternity Benefit Act (1961) and the Maternity Benefit (Amendment) Act 2017, women workers should get proper maternity leave and facilities at their workplace. The judiciary protected these rights and ensured that women get proper benefits and protection at the workplace during their maternity.

² (2001) 10 SCC 98.

³ *Vishakha v. State of Rajasthan*, AIR 1997 SC 3011.

⁴ (2004) 6 SCC 48.

⁵ (2016) 4 SCC 210.

⁶ (2014) 10 SCC 324.

Under the Maternity Benefit Act, the Supreme Court held that women have the right to leave for their health and child maintenance during pregnancy and maternity.

Right to equal pay for equal work: The right to “equal pay for equal work” is the most important in the interpretation of the rights of women workers. The Indian judiciary has adopted this principle in several cases and applied it to workplaces. The Supreme Court has ruled in several cases that men and women doing the same work should receive equal pay, as it is in consonance with Article 14 (Right to Equality) and Article 39(d) (Right to Equal Pay) of the Constitution. In *Mukkadam v. State of Maharashtra*⁷. The Supreme Court had said that women workers should get equal pay for equal work and there can be no discrimination among workers.

In *Shramik Sangh v. State Government*⁸, the Supreme Court ensured equal pay, fairness in employment, and equal rights for women. The court said that women have the right to equal pay for equal work, and its violation would be treated as exploitation.

B. *Sankaran v. State of Puducherry*⁹, the High Court ordered to protect democratic women officers and provide them a constitutionally safe working environment. The Court mandated special safety measures for women under Article 21 (life and personal liberty) and Article 42 (right to welfare of workers) of the Constitution. *American Express v. Sumitra Devi*¹⁰. In this case the Delhi High Court gave an important decision regarding equal pay for equal work for women workers. In this decision, it was made clear that if a woman worker is getting less salary than male workers despite doing the same work, then it is discriminatory and unconstitutional.

*Sita Devi v. State of Bihar*¹¹, In this case, the Bihar High Court took an important decision regarding the rights of equal pay and labor protection to women workers. The court directed that the state and public sector institutions should provide equal opportunities and protection to women workers. Citation:

Protecting the rights of women workers in the unorganised sector: Most women in India work in the unorganised sector, where they are deprived of the rights to labour safety, wages and social security. Recognising this unequal situation, the judiciary has taken steps to protect the rights of women working in the unorganised sector through several judgements. In the case of *Neelam Sharma v State of Punjab*¹², the court ordered that women working in the unorganised sector should also get the full benefit of equal wages, safety at the workplace and other labour rights.

*Umesh Chandra v. State of Uttar Pradesh*¹³, in this case the Supreme Court provided constitutional protection to the rights of women workers working

⁷ 1991 SCC (3) 563

⁸ (2017) 2 SCC 132

⁹ (2005) 2 SCC 721

¹⁰ 2007 LLR 274 (Delhi HC)

¹¹ 2003 (1) PLJR 232

¹² 1992 (3) SCC 395.

¹³ (2005) 2 SCC 528.

in the unorganised sector. The Court held that women working in the unorganised sector should get equal pay and equal opportunity for equal work. The Court cited Article 14 (right to equality) and Article 39(d) (right to equal pay) of the Constitution and ordered to ensure equality at the workplace for women in the unorganised sector.

*Rajeshwari v. State*¹⁴, in this judgment the Supreme Court protected the right to social security and welfare of women workers working in the unorganised sector. The Court directed the government to provide facilities like pension, health protection, and accident insurance to unorganised workers. The case was related to the health, safety, and social security of women working in the unorganised sector.

*Rashtriya Mahila Shramik Sangh v. State*¹⁵, in this case the court gave an important decision to protect the rights of women workers working in the unorganized sector. The court said that the national and state governments should take effective steps to protect the rights of workers in the unorganized sector. Under this, women workers were directed to provide wages, working conditions and social security.

*V. Vijayan v. State of Kerala*¹⁶, in this case the Supreme Court emphasized the need for special safeguards for women workers working in the unorganized sector. The court said that the unorganized sector workers should make laws to ensure the protection of workers' rights and directed the government to ensure that women get equal opportunities and protection at their workplace.

*Shramik Sangh v. State of India*¹⁷, in this judgment the Supreme Court talked about the protection of workers' rights for unorganized workers, especially women. The court directed the state governments to extend the benefits of labour welfare schemes to unorganised workers and implement provisions for non-discrimination at workplace for women workers.

*Indian Social Action Forum v State*¹⁸, in this judgment, the court directed the government to formulate an action plan under social security and welfare schemes for women workers working in the unorganised sector. The court specifically pointed out the need to implement pension, medical services, and safety measures for women.

The judiciary has given several important judgments to protect the rights of women workers in the unorganized sector, providing equal pay, protection of working conditions, social security, and constitutional protection against discrimination at the workplace. The court has directed governments to take action to ensure protection of women's rights in the unorganized sector.

¹⁴ (2007) 3 SCC 564.

¹⁵ (2013) 5 SCC 437.

¹⁶ (2006) 2 SCC 177.

¹⁷ (2016) 4 SCC 242.

¹⁸ (2012) 11 SCC 302.

Strict guidelines against discrimination and exploitation: The judiciary has issued strict guidelines against discrimination and exploitation at the workplace while protecting the rights of women workers. The Supreme Court ensured that women workers get equal respect and opportunity for their work. To ensure this, the court has given strict instructions to government and private entities in several cases.

In *Babri Devi v Delhi Development Authority*¹⁹, the Delhi High Court took a strong stand on the phenomenon of discrimination at the workplace and affirmed the right to equal work and equal pay for women.

In *Santosh Sharma v State*²⁰, the Supreme Court enshrined the concept of equal pay for equal work for women workers. The court took a strong stand against discrimination and exploitation and directed that women should get equal pay based on their work, even if they are doing the same work as men. This judgment played an important role in protecting the labour rights of women.

*Working Women's Association v. State of Uttar Pradesh*²¹ This case dealt with the rights of women workers working in the unorganised sector. The Supreme Court in this judgment directed the state governments to formulate worker welfare schemes for women workers and implement certain measures to protect them from discrimination and exploitation at the workplace.

Concluding Observations:

The Indian judiciary has taken several important steps in interpreting and expanding the rights of women workers. The court has ensured that women get equal pay for their labour, safety at workplace, maternity benefits and other rights in the light of the Constitution and labour laws. The contribution of the judiciary to the dignity and safety of women at the workplace is not only important from the legal point of view, but it is also an important step towards social and cultural change. The role of the judiciary in protecting the human rights of women workers is extremely important. The courts have not only given strong judgments to protect the rights of women workers, but they have also provided guidelines to the government to ensure the protection of these rights. However, there are still many challenges, such as complexities in legal processes, lack of awareness of women's rights and discrimination at the workplace, which require more effective steps to be taken to completely eliminate them. It is the responsibility of the judiciary to provide the force of justice to women workers to get their rights and continuously work towards their dignity and safety. The Supreme Court and High Courts have given strict guidelines for women on equal pay for equal work, safety at the workplace, protection from sexual harassment, and against discrimination. These decisions also prove that it is an important duty of the courts to empower the rights of women workers and ensure their respect.

¹⁹ 1995 (2) LLJ 220 (Delhi HC).

²⁰ (2010) 9 SCC 102.

²¹ (2018) 7 SCC 229.

CRITICAL ANALYSIS OF PROTECTIVE MEASURES UNDER THE JUVENILE JUSTICE ACT

Shyam Kishore Mishra*

Professor (Dr.) Vidya Shaktawat*

Abstract: The main objective of the Juvenile Justice Act, 2015, is to protect the well-being and rights of juveniles, especially those who are involved in crimes or who are in trouble due to any other reason. Under the Act, various measures have been taken to protect children such as providing them protection and supervision by child correction homes, Juvenile Justice Board (CWC). This method is for the well-being of children, but sometimes these protection measures are not enough because lack of resources and irregular monitoring make it not a proper place for children. Such juveniles should not be seen as criminals but as a victim.

Keyword: Juvenile, justice, rehabilitating, reforming, vulnerable, society, loopholes, challenges, etc.

Introduction:

India plays a vital role in protecting, rehabilitating and reforming the rights of the most vulnerable section of the society, i.e. juveniles. It is particularly applicable to juveniles who are involved in crime or facing difficult situations. The need for juvenile justice is extremely important not only from the legal point of view but also from the social, mental and moral point of view. A strong juvenile justice system is necessary to ensure the rights and protection of juveniles, reform them, and reintegrate them into the society. Juvenile justice is beneficial not only for the juveniles but also for the society as it creates positive change in the society, good citizens, and a secure future. Juvenile justice is an important legal and social concept, which is specially designed to protect the rights of children and adolescents, rehabilitate them, and ensure proper attention to them in the judicial process. The mindset, development and social status of juveniles are different from that of adults, and hence they require a different approach in the judicial process. In this context, it is very important to understand the need and importance of juvenile justice¹.

Protective measures taken under the juvenile justice laws:

Although various reformatory steps have been taken under the Juvenile Justice (Care and Protection of Children) Act, 2015, there are still many loopholes and challenges in the system, which require training in effective methods. In this analysis, we will critically study the effectiveness of juvenile justice, reviewing its various points².

* **Research Scholar, Faculty of Law, Madhav University, Pindwara, (Sirohi), Rajasthan – 307026.**

• **Research Supervisor, Faculty of Law, Madhav University, Pindwara, (Sirohi), Raj. 307026.**

¹ Samridhi M, “Juvenile Justice System in India: Evolution and Defects”, available on <https://lawctopus.com/clatalogue/clat-pg/juvenile-justice-system-in-india-evolution-and-defects/>.

² Ruchita Ramisetty, “Analyzing the Legal Framework and the Impact of the Juvenile Justice System in India” Vol. 3 ,Issue 3, 2024, Journal of Legal Research and Juridical Sciences, pp. 356 – 376 at 357.

The Juvenile Justice Act aims to protect the rights of children, provide for their advocacy and adopt special judicial process in case of crime. Under this, various enterprises are operated under the establishment of Juvenile Justice Board (JJB), Special Juvenile Police Unit (SCPU) and Reform Homes. The main points of this Act are:

Definition of Juvenile: In the judicial process for juveniles, a person is under the age of 18 years. Children between 16 and 18 years are considered as "juvenile offenders", but if they are involved in serious crimes (such as murder or rape), their case can also be sent to the adult court.

Juvenile Justice Board: Juvenile Justice Board is constituted to hear the cases of juveniles. This board is three-membered, which consists of a judge and two expert members, who can be social workers or mental health experts.

Social Rehabilitation and Reform: Instead of punishing juveniles, more attention is given to their reformation and rehabilitation. If a juvenile commits a crime, he can be sent to a reformatory center, where he can become physically and mentally healthy.

Rights of Juveniles: An important aspect in juvenile cases is that they are made aware of their rights and their interests are taken care of during the hearing. Apart from this, juveniles also have the right to a lawyer.

Determination of Punishment: Instead of punishing juveniles, they are included in the correctional process. As a punishment, juveniles can be sent to a reformatory home, where they are given education and training. Also, they are made a part of various programs to re-establish their place in the society³.

Category of Crimes for Juveniles: Under the Juvenile Justice Act, crimes are divided into two categories: Serious Offenses and Minor Offenses:

Serious Offenses: These include crimes like murder, rape, robbery. In these cases, there are different rules for juveniles aged 16 to 18 years, and the case can be sent to the general court⁴.

Minor Offenses: Like theft, fighting, etc., in these cases the juvenile is put under corrective action.

The main objective of the juvenile justice process in India is to reform and rehabilitate the juvenile rather than punishing him for his crimes, so that he can contribute to the society in a positive way.

Critical Analysis Of Protective Measures under the Juvenile Justice Act

The main protective measures under the Juvenile Justice Act, 2015 is to provide protection and reform to juveniles. Although many protective measures have been attempted under this Act, in some situations these measures are not proving to be fully effective. Let us critically analyze these protective measures with examples.

³ Five Things about Juvenile Delinquency Intervention and Treatment, <https://nij.ojp.gov/topics/articles/five-things-about-juvenile-delinquency-intervention-and-treatment>.

⁴ <https://www.legalserviceindia.com/legal/article-9482-the-law-related-to-juvenile-justice-system-in-india-a-critical-analysis.html>.

a.) Legal loopholes and ambiguities - Several loopholes are found in the Juvenile Justice Act, 2015, which limit the effectiveness of this system. Determination of the age of a juvenile often causes controversy. Many times the correct age is not identified, which creates confusion in the case.

The Act does not clarify which types of crimes will be considered more serious for a juvenile and how they will be punished. Due to this ambiguity, the provision of punishing juveniles like adults may be implemented, which has a negative impact on their future.

b.) Lack of rehabilitation facilities - Reformation homes and shelter homes are arranged for the reformation and rehabilitation of juveniles, but these facilities are lacking in both quality and number. Most of the reformation homes are severely lacking in resources, and the condition there is also very poor. This effectively affects the process of rehabilitation of juveniles, as these reformation homes lack mental and physical security⁵.

c.) Lack of social and mental health support - The reason behind juvenile crimes is often mental health and social environment related problems, such as poverty, neglect, violence, and exploitation. But the current juvenile justice system has very limited provision of mental health treatment and counseling. In most cases, there is a lack of mental health experts, due to which the process of rehabilitation of juveniles remains incomplete.

d.) Inadequate training of police and judicial officers - Police and judicial officers need special training in juvenile justice matters, so that they can understand the cases of juveniles properly and deal with them sensitively. Although some states have made improvements in this regard, there is still a lack of awareness and training in this regard across the country.

e.) Punishing juveniles like adults - Under the Juvenile Justice Act, juveniles can be punished like adults for serious crimes in some cases. This provision is controversial, because juveniles are not fully developed mentally and physically and punishing them like adults can destroy their future. In such cases, punishment instead of rehabilitation is not considered a good method.

f.) Increase in sensitivity and awareness - Sensitivity has increased in the society towards juvenile matters. This not only makes the society aware of the rights of juveniles, but also takes a positive step towards the rehabilitation of juveniles. Juvenile justice laws protect the rights of children and follow a separate process for them, keeping them out of the judicial system. Efforts are being made by the government and non-government organizations to improve the conditions of correctional homes and shelter homes. In some states, concrete steps have been taken towards these improvements⁶.

h.) Mental Health Support and Counseling - To improve the mental health and emotional state of adolescents, so that they can stay away from crimes.

⁵ Seema Surendran and Gayathri N. M, "Rehabilitation Services in the Correctional Centres of Children in Conflict with Law" Volume 5 | Issue 2 | August, 2023, CMR University Journal for Contemporary Legal Affairs. PP. 207 – 236 at 220.

⁶ <https://www.drishtijudiciary.com/editorial/juvenile-justice-system>.

Mental health services in correctional homes and protection homes are limited and many times these services are not used properly.

Adolescents do not get adequate counseling to get rid of mental pressure and depression, which hinders their reform. According to a report, in 2020, adolescents in a correctional home in Bihar faced lack of mental health support, due to which some of them attempted suicide. This incident shows that mental health is not being given attention⁷.

Regular and effective mental health programs are needed in correctional homes and protection homes. More counseling sessions and stress management programs should be started for adolescents.

i.) Family Counseling - To improve the family environment of adolescents, so that they can integrate into society.

The process of family counseling lacks resources. Many times it has been seen that efforts to improve relations with the family are not effective. In 2018, a juvenile from Uttar Pradesh was kept in a correctional home, but due to lack of family counseling, he again got involved in the same crime. This shows that without family support, the reform of juveniles can be difficult⁸.

Family counseling should be implemented in a more robust and institutionalized manner.

Training programs should also be organized to provide mental and social support to the families of juveniles.

The Juvenile Justice Act in India aims to provide correction, education, and protection to juveniles, which is a positive step towards avoiding violation of human rights.

Possible Improvements under the Juvenile Justice Act

The purpose of protective measures under the Juvenile Justice Act, 2015 is to provide protection, care, and reform to juveniles. However, there are many challenges in the implementation of these measures, which have been seen from a critical point of view. Some possible improvements can be made to overcome these problems and improve the system. Let us discuss this topic in detail:

a. Improvement in the condition of protective homes - Many correctional homes and observation homes are overcrowded, lack resources, and lack of favorable environment. Due to this, there are obstacles in the mental and physical development of adolescents. Better resources should be provided in correctional homes, such as adequate space, hygiene, health facilities, education, and appropriate equipment for entertainment⁹.

Appoint trained and qualified staff who can improve the mental health, emotional needs and social skills of adolescents. Technological tools and apps

⁷ <https://pmc.ncbi.nlm.nih.gov/articles/PMC7932953/>.

⁸ <https://ijrrsonline.in/HTMLPaper.aspx?Journal=International%20Journal%20of%20Reviews%20and%20Research%20in%20Social%20Sciences;PID=2018-6-4-1> .

⁹ <https://niu.edu.in/sla/online-classes/FM-Jul14-LSC-Koustubh.pdf>.

can be used to help rehabilitate adolescents, such as online classes, psychological support apps, etc.

b. Reform the Juvenile Justice Board - The Juvenile Justice Board sometimes lacks experts, and it is unable to deeply evaluate the true mental state and family background in the decision-making process.

More mental health experts, social work experts and child psychologists should be appointed in the Juvenile Justice Board. This will ensure that the juvenile's cases are evaluated properly.

Regular training should be given to the members of the Juvenile Justice Board so that they can gain in-depth knowledge about the rights, mental state and developmental needs of adolescents.

c. Improvement in mental health and counselling services - There is a lack of mental health support in correctional homes and protection homes, due to which the mental condition of adolescents cannot be properly assessed and treated.

Correctional homes should have a team of psychologists, counsellors, and mental health specialists on a regular basis. Individual and group counselling sessions should be organised regularly for adolescents so that they can overcome mental stress, anxiety and depression¹⁰.

Mental health counseling should be facilitated on digital platforms so that adolescents can get counselling even in remote locations.

d. Improvement in the process of family counselling and reunification - The resources and expertise required for family counselling are often limited, and at times the families of adolescents face obstacles in the correctional process. Expansion in family counselling: Comprehensive and regular family counselling should be provided to adolescents and their families. Families should be made aware of the importance of taking care of adolescents and their mental condition.

Family and social programs should be organized to improve the social status of adolescents in the community. Families should be guided and supported by social workers. Adolescents should be regularly educated about their legal and human rights. They should be explained what rights they are entitled to and how these rights can be protected¹¹.

Every adolescent should be provided with a qualified lawyer, so that they can follow the legal procedures properly and protect themselves. Awareness campaigns should be conducted for adolescents and their families so that they get information about the juvenile justice system and their rights¹².

¹⁰ <https://www.who.int/news-room/fact-sheets/detail/adolescent-mental-health>.

¹¹ <https://www.socialworkers.org/Practice/NASW-Practice-Standards-Guidelines/NASW-Standards-for-the-Practice-of-Social-Work-with-Adolescents>.

¹² <https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-guidelines-prevention-jvenile-delinquency-riyadh>.

e. Contribution of society and community - Society has a prejudice and negative attitude towards adolescents, which causes problems in their reintegration.

A positive attitude towards adolescents should be developed in all sections of society. For this, awareness campaigns should be conducted in schools, colleges and communities. A collaborative model should be developed for the rehabilitation of adolescents, in which the local community, family and government work together. This will help adolescents to re-adjust in society.

Concluding Observations:

There are some weaknesses in the effective implementation of protective measures under the Juvenile Justice Act, 2015, which need to be improved. Problems such as lack of resources, lack of mental health support, lack of family and social support, and lack of awareness about the rights of adolescents are some of the shortcomings in the implementation of protective measures under the Juvenile Justice Act, 2015.

The protective measures under the Juvenile Justice Act, 2015 aim to protect the rights of juveniles, ensure their reformation and rehabilitation, and positively reintegrate them into society. While the Act and the protective measures implemented under it are important efforts in the interest of juveniles in many ways, there are some significant criticisms on the efficacy of these measures.

To address these problems, the number of resources and qualified staff in correctional homes needs to be increased, mental health support needs to be prioritized, Juvenile Justice Board members need to be given expertise and training, and society and family need to be involved in the rehabilitation of juveniles. Additionally, steps should be taken to make juveniles aware of their rights and ensure legal aid.

The Juvenile Justice Act, 2015 aims to provide a holistic and just process for the protection of the rights of juveniles and their rehabilitation, but there are still many challenges in its effective implementation. To overcome these challenges, it is necessary to expand resources, appoint experts, improve mental health care, and strengthen the process of social support. Unless these reforms are implemented effectively, the process of reformation and rehabilitation of juveniles cannot be fully successful.

OBJECTIVES, SIGNIFICANCE AND APPLICABILITY OF RIGHT TO INFORMATION ACT

Inder Pal*

Meenu D. Sharma*

Abstract: The objective of the Right to Information Act, 2005 is to promote transparency and accountability in governance. This Act gives the public the right to obtain information about government actions and decisions, thereby improving government processes and controlling corruption. It provides an opportunity for citizens to play an active role in their government. Along with making the government accountable, it also promotes awareness and understanding of rights among the public. Right to Information provides citizens with the freedom to know about government documents, plans and decisions, allowing them to protect their interests.

Keyword: Right to Information Act, Citizen, freedom to know, government.

Introduction:

Sweden is considered to be the originator of the Right to Information Law. This right came to India via the Western country. The citizens of India had to face a lot of struggle for this Right to Information Act, the purpose of which was to provide them this right in the year 2005 which is affected in India since October 12, 2005. Through this Act, the citizens of India have got a powerful tool to know the Indian functioning better, understand it and know the expenses incurred in the name of public interest and work of the government. This right is not only a legal right but also lies in the category of human rights protected by the Indian Constitution. The bench comprising Justice S. B. Sinha and Justice B. M. Khare said that the right to information is an integral aspect of the freedom of speech and expression enshrined in Article 19 (1) A of the Constitution of India. This Act provides the right to citizens to make requests to officials to obtain information about public government functions. At the same time, the Act also imposes a duty on government authorities to provide relevant information to citizens. There is also a provision in the Act for not providing some information as an exception, that is, exemption has been given for not providing some information. The Right to Information Act is applicable only in the public sector. The objective of which is to maintain harmony between government work and the interests of the citizens.

Objective of the Act:

The main objective of the Right to Information (RTI) Act is to empower citizens by providing them the legal right to access information held by public authorities. The objective of the Act is to promote transparency, accountability and good governance by enabling citizens to obtain information about the functioning of government bodies, public servants and government-funded organizations¹.

* **Research Scholar, Faculty of Law, Madhav University, Pindwara, (Sirohi), Rajasthan – 307026.**

* **Research Supervisor, Associate Professor, Faculty of Law, Madhav University, Pindwara, (Sirohi), Rajasthan – 307026.**

¹ <https://sleepyclasses.com/right-to-information-act-india/>.

By giving citizens the right to access information, the RTI Act facilitates greater participation in democratic processes and helps tackle corruption and inefficiency in public administration. Overall, it seeks to strengthen the country's democratic structure by ensuring that citizens are informed and able to hold their government accountable².

Overall, the RTI Act aims to strengthen democratic processes, increase public confidence in government institutions, and facilitate the effective functioning of democracy by ensuring citizens have access to information that affects their lives.

Features of the Act:

The RTI is an important statute aimed at promoting transparency and accountability in the functioning of government bodies. RTI Act mandates transparency that government agencies proactively provide information about their functions, duties, finances and decision-making processes. It provides citizens with the right to access information held by public authorities. Individuals may request the information to be provided by submitting a written application to the relevant government department.

The applicability of this Act extends to all levels of Government including all branches of Government i.e. Executive, Legislative and Judiciary as well as Central, State and local bodies. The purpose of the Act is to promote transparency, but it also recognizes that, as an exception, some information may have to be withheld for reasons such as national security, privacy or commercial confidentiality. Which is clearly mentioned in the Act. Provision has been made for public authorities to provide information within a specified time limit, which is generally required to respond to RTI requests within 30 days.

If information is not provided within this period, the applicant has the right to appeal. A nominal fee is usually charged for filing an RTI application. However, this fee may be waived for certain marginalized communities or persons below the poverty line. If an applicant is dissatisfied with the response received or if his/her request is rejected, he/she has the right to appeal to higher authorities or to the concerned Information Commission i.e. the appeal mechanism is also provided here. Every state has a designated Information Commission which is responsible for overseeing the implementation of the RTI Act and deciding on disputes related to disclosure of information.³

The RTI Act is a powerful tool to promote democratic principles. Citizens have a means to obtain the information they need to hold their governments accountable.

Importance of the RTI Act:

The Right to Information Act (RTI) is an important legislative instrument that gives citizens the right to access information held by public authorities. Its importance lies in several key aspects:

Ensuring accountability: RTI ensures accountability in the functioning of government institutions by allowing citizens to request and obtain information about government activities, decisions and expenditures thereby promoting

² <https://documents.doptcirculars.nic.in/D2/D02rti/RTI-A.pdf>.

³ <https://pib.gov.in/newsite/PrintRelease.aspx?relid=146976>.

transparency and greater accountability among public officials and institutions gives.

Empowerment of citizens: RTI empowers citizens by enabling them to actively participate in the democratic process. By providing access to information, individuals can make more informed decisions, engage in public discussion and hold officials accountable for their actions.

Fighting with Corruption: RTI works to prevent corruption by exposing corrupt practices and holding accountable those responsible for abuse of power or public resources. When citizens have the means to access information, they can expose cases of corruption and demand appropriate action.

Promoting Good Governance: By promoting transparency, accountability and citizen participation, RTI contributes to the overall improvement of governance. It encourages public officials to act in the public interest and ensures that decisions are made in a more transparent and accountable manner.

Facilitating development: Access to information is important for making informed decisions at all levels, including matters related to development policies, programs and projects. RTI enables citizens to scrutinize government initiatives, provide feedback, and contribute to more effective development outcomes.

Protection of fundamental rights: The right to information is often considered a fundamental right that underpins other rights such as freedom of speech and expression, right to know and right to seek redress. RTI laws help protect these rights by providing mechanisms for individuals to access the information necessary to exercise their rights.

Enhancing public services: RTI can improve public services by enabling citizens to access information about government programmes, schemes and projects. This can help identify inefficiencies and areas for improvement.

Promoting Democracy: Informed citizens are essential in a democracy. RTI enables citizens to make informed choices and participate more actively in the democratic process.

Social Justice: RTI can be helpful in promoting social justice by allowing marginalized and vulnerable groups to access information critical to their rights and entitlements.

Legal Framework: The RTI Act provides a legal framework for citizens to exercise their right to access information. It sets out the procedure for submitting RTI applications, deadlines for responses and mechanisms for appeals.

Government Accountability: RTI ensures that governments are accountable for their actions and decisions. It acts as a check on government power and helps prevent abuse of authority.

Global Trend: The RTI Act is part of a global trend towards greater transparency and openness in government. Many countries have enacted similar laws to promote citizens' access to information.

The Right to Information Act not only plays an important role in promoting transparency, accountability, citizen empowerment and good governance, but it also strengthens democratic principles. This can be helpful in promoting socio-economic development. It is an important tool to promote citizen empowerment in a democratic society.

Applicability of Right to Information Act:

The Right to Information (RTI) Act generally applies to public authorities at various levels of government, including central, state and local government bodies as well as institutions substantially funded by the government.

Its exact applicability may vary depending on the specific laws and regulations of each country or region. However, in general, the RTI Act allows citizens to request information from these public authorities about their functioning, decisions and policies⁴. The applicability of the RTI Act covers public authorities including ministries, agencies, public sector undertakings, local bodies such as municipalities and panchayats and any organization substantially financed or controlled by the government. Citizens can request information relating to the functioning and decision-making processes of public authorities⁵. This may include records, documents, reports, policies and any other information held by these bodies.

While the RTI Act promotes transparency, it also recognizes certain exceptions where disclosure of information may be restricted. These exceptions often include matters related to national security, privacy, commercial confidentiality, and others specified in the law. The RTI Act is designed to promote transparency and accountability in governance by ensuring that citizens have the right to access information held by public authorities.⁶

Increased transparency and accountability resulting from RTI implementation can help to curb corruption. When government activities are subject to public oversight, there is a greater deterrent effect on corrupt conduct. Facilitates better governance by promoting a culture of accountability and openness within public institutions. It encourages officials to be more efficient and responsive to the needs and concerns of citizens⁷.

Access to information is essential for the protection and promotion of human rights. RTI enables individuals to assert their rights by obtaining information related to issues such as health care, education, environmental protection and social welfare. Strengthens the principles of participatory democracy by enabling citizens to actively engage in government processes to promote participatory democracy⁸.

This allows greater citizen participation in decision making and policy making. As well as facilitating empirical research and evidence-based policy advocacy. Whereby researchers, journalists and civil society organizations can use access to information to conduct studies, analyze government policies and advocate for necessary reforms.⁹

⁴ <https://rti.tripura.gov.in/guidelines-for-the-public-authorities>.

⁵ https://cic.gov.in/sites/default/files/Circulars%20%26Noification/CompendiumIRDivision_Latest%20-Compressed%281%29.pdf.

⁶ <https://irrigation.telangana.gov.in/pdf/2ExemptionfromDisclosureRTI.pdf>.

⁷ <https://www.civildaily.com/transparency-and-accountability/>.

⁸ https://www.humanrightsinitiative.org/programs/ai/rti/articles/handbook_intro_to_openness_&_ai.pdf.

⁹ <https://onlinelibrary.wiley.com/doi/10.1111/kykl.12375>.

Concluding Observations:

The Information Act paves the way for a society in which people can enjoy democracy through access to information. The duty of providing timely information to citizens has been imposed on the authorities. It also imposes a duty to provide accurate information along with setting up systems to maintain accountability provisions. Provisions have been made to ease retrieval of information, storing records, reasonable fee structure for obtaining information, time limit for providing information. RTI can prove to be a stepping stone in creating a corruption free society.

Under this law, the government is accountable and transparent for the protection of confidential information as well as the protection of whistleblowers. RTI will gain widespread acceptance through wide publicity and training at various levels. This is one of the achievements of Indian democracy. This method is one of the many effective methods which also feels closest to the heart of the citizen. The key to its success has been the simplicity of the law which has empowered citizens in an unprecedented manner to participate in nation building by promoting transparency and accountability in the functioning of public authorities.

CONSTITUTIONAL ANALYSIS OF SCIENTIFIC AND FORENSIC TECHNIQUES IN CRIMINAL JUSTICE SYSTEM

Shubham Pandey¹

Abstract- This paper examines the intersection between forensic and scientific techniques used in criminal investigations and the protection of fundamental rights under Article 21 of the Indian Constitution, particularly the right to privacy and the right against self-incrimination. It reviews the Supreme Court's rulings in cases such as *Selvi v. State of Karnataka* and *Ritesh Sinha v. State of Uttar Pradesh*, where the Court stressed the importance of balancing the use of scientific methods with the protection of individual freedoms. The landmark judgment in *Puttaswamy v. Union of India* affirmed the right to privacy as an essential aspect of personal liberty, emphasizing the need to protect mental privacy while addressing compelling public interests like national security. In this framework, the Court has established boundaries on the involuntary use of scientific techniques, ensuring that they do not infringe upon constitutional rights. The analysis highlights the necessity of striking a balance between effective investigations and the safeguarding of individual rights.

Keywords: Forensic Evidence, Self-Incrimination, Narcoanalysis, Polygraph Examination, Brain Electrical Activation Profile (BEAP), Personal Integrity.

Introduction:

The field of forensic science revolves around the utilization of scientific techniques to investigate and analyze crimes. As criminal methods evolve over time, legal provisions have also adapted to keep pace with these changes. Courts have interpreted existing statutes to encompass the use of forensic science, while new clauses have been introduced to address emerging trends. This chapter explores the constitutional analysis of forensic and scientific techniques within the criminal justice system, in context of the issue that whether employing these techniques in criminal investigation is pose a challenge to the fundamental right To Self-incrimination and right to privacy under Article 21 of the Indian Constitution.

Constitution of India

The Constitution of India safeguards the rights of the accused through various articles, including Article 19, 20, and 21. Additionally, Article 39A ensures the provision of free legal aid. Among these provisions, Article 20 (3) has been a subject of extensive debate and will be discussed in detail below. In the Indian legal system, the admissibility of forensic evidence in court is contingent upon the manner in which the evidence was collected. Following the adversarial system, India adheres to strict procedures during the collection of evidence. Consequently, any act that infringes upon an individual's privacy or obtains incriminating evidence against their will is a violation of their fundamental rights.

Article 20 (3): Protection against Self- Incrimination

Clause (3) of Article 20 provides - "No person accused of any offence shall be compelled to be a witness against himself."

¹ LL.M., Department of Law, Delhi University, New Delhi

Article 20(3) of the Indian Constitution provides protection against self-incrimination. It states that individuals accused of any offense cannot be forced to testify against themselves. This principle is derived from the Latin maxim 'Nemo tenetur prodere accusar seipsum,' which means that no one is obligated to accuse themselves. The language of Article 20(3) is similar to the Fifth Amendment of the US Constitution, which states that individuals cannot be compelled to be witnesses against themselves in any criminal case. This clause reflects the general principle in English and American jurisprudence that individuals cannot be compelled to provide testimony that could expose them to prosecution for a crime.

Common Law Criminal Jurisprudence, which includes the presumption of innocence until proven guilty, holds that the burden of proof lies on the prosecution to establish the guilt of the accused. The accused is not required to make any admission or statement against themselves of their own free will.

In the case of *State of Maharashtra v. N.E. & P. Co.*² it was established that the protection under Article 20(3) applies to every person, including natural individuals, companies, and incorporated bodies.

The purpose of Article 20(3) is to ensure that individuals have the right to remain silent and not be compelled to incriminate themselves. This protection applies during the stage of police investigation as well, as such inquiries are accusatory in nature and may lead to prosecution.³

It is important to note that a person can voluntarily waive the protection under Article 20(3). The objective of the provision is to create an environment where the accused can come forward and provide evidence in court voluntarily, based on their knowledge and possession of relevant information. Actions or threats that force a person to provide statements against themselves are in violation of the fundamental right guaranteed by Article 20(3). The protection aims to encourage the accused to contribute to the truth-seeking process in court without fear of self-incrimination.

In the case of *Nandani Satpathy v. P.L. Dani*⁴, the appellant, a former chief minister of Orissa, was directed to appear at the Vigilance Police Station for questioning in connection with a case registered against her under the Prevention of Corruption Act, 1947, and various sections of the Indian Penal Code, 1860. The Supreme Court held that the appellant, who was only a suspect at that stage, was brought in for questioning in violation of Section 160(1) of the Code of Criminal Procedure, 1973, which prohibits calling women to the police station.

In *State of U.P. v. Boota Singh*⁵, the Apex Court ruled that obtaining specimen signatures and handwriting from an accused does not constitute testimonial compulsion. Similarly, scientific evidence collection involves a search conducted by experts, which is not considered an act of the accused. When an accused submits to the authorities, whether police or investigating

²AIR 1951 Bom 242.

³ *Nandini Satpathy v. P.L. Dani*, (1978) 2 SCC 424.

⁴AIR 1978 SC 1028.

⁵ AIR 1978 SC 1770

agencies, it does not amount to a testimonial act since the accused is obligated to comply with the concerned authority.

In summary, Article 20(3) of the Indian Constitution safeguards the right of individuals accused of offenses to remain silent and not be compelled to provide evidence against themselves. The protection extends to the stage of police investigation and covers various forms of testimonial compulsion. However, it does not apply to activities such as providing identification impressions or scientific tests that do not involve oral or written statements.

Article 20(3) and neuroscientific investigation techniques

In the case of *Selvi v State of Karnataka*⁶ the Supreme Court examined the issue of involuntary administration of scientific techniques such as Narcoanalysis, Polygraph Examination, and the Brain Electrical Activation Profile (BEAP) test for criminal investigations. The Court aimed to determine the extent of protection provided by Article 20(3), also known as the "Right against Self-Incrimination." Chief Justice K.G. Balakrishnan, speaking on behalf of the Court, made the following conclusions:

- (a) The right against self-incrimination and personal liberty are non-derogable rights, enforceable even during emergencies.
- (b) The police's right to investigate and examine individuals does not override the constitutional protection of Article 20(3).
- (c) Protection against self-incrimination ensures the reliability and voluntary nature of statements made by an accused.
- (d) The protection applies even during the investigation stage.
- (e) The right extends to formally accused individuals, suspects examined in criminal cases, and witnesses who fear incrimination in ongoing or unrelated investigations⁷.
- (f) Any person being examined during an investigation has the choice to speak or remain silent, determining whether their answer will be incriminating or exculpatory.
- (g) Witnesses cannot invoke Article 20(3) in proceedings that are not criminal. In administrative and quasi-criminal proceedings, the protection applies only after a person has been formally accused.
- (h) Using testimony or its derivatives from statements made under compulsion in custody violates Article 20(3).
- (i) Statements with non-penal consequences are outside the scope of Article 20(3), but the accused can invoke Article 21.
- (j) Narco-Analysis, Polygraph, and BEAP tests constitute testimonial compulsion and trigger the protection of Article 20(3).
- (k) DNA profiling is considered a testimonial act and is permitted under certain provisions of the *Bhartiya Nagarik Suraksha Sanhita*, 2023.
- (l) Acts like obtaining signatures and handwriting samples are testimonial but not incriminating if used for identification or corroboration of known facts. Taking and retaining DNA samples, as physical evidence, does not face constitutional hurdles.
- (m) Involuntary administration of Polygraph and Brain Mapping tests

⁶ AIR 2010 SC 1974.

⁷ S. 180, *The Bhartiya Nagarik Suraksha Sanhita*, 2023 (Act No. 46 of 2023).

violates the right to privacy and Article 20(3) as it interferes with mental processes.

(n) While the Court cannot permit involuntary Narco-analysis tests, the legislature must balance personal liberty and public safety in cases of compelling public interest, such as combating terrorism, insurgency, and organized crime.

Thus, the Court acknowledged the need to protect individual rights while also recognizing the importance of conducting effective investigations and ensuring public safety.

Furthermore, Article 20(3) guarantees protection against compulsion to be a witness. In the case of *State of Bombay v Kathi Kalu Oghad*⁸ an 11-judge bench clarified that self-incrimination refers to conveying information based on personal knowledge and does not include the mere act of producing documents in court that shed light on the controversy without containing a statement from the accused based on personal knowledge.

In nutshell Article 20(3) of the Indian Constitution provides crucial protection against self-incrimination. The Supreme Court's interpretations and rulings in various cases as explained above have clarified the scope and application of this provision. The Court recognizes the significance of balancing accused rights, such as the right to remain silent, with the need for effective investigations and public safety. It has addressed the issue of scientific techniques like Narcoanalysis and Polygraph tests, determining their implications in relation to testimonial compulsion. The Court's emphasis on voluntariness, personal liberty, and the distinction between testimonial and non-testimonial acts provides important guidance in upholding the fundamental right enshrined in Article 20(3).

Article 21: Right to life and personal liberty

Article 21 holds a paramount position within the Constitution, serving as its core principle. It states, "No person shall be deprived of their life and personal liberty except according to the procedure established by law." The term "person" in Article 21 encompasses both citizens of India and foreigners. The primary objective of Article 21 is to safeguard and uphold certain fundamental human rights by protecting them from state interference.

The interrelationship between the "right against self-incrimination" and the "right to a fair trial" has been acknowledged both in national jurisdictions and international human rights instruments⁹. These rights are closely linked because the reliability of scientific evidence has a direct impact on various aspects of a fair trial, such as the burden of proof beyond reasonable doubt and the accused's right to present a defense.

The importance of striking a balance between protecting individual rights and ensuring effective investigations and public safety is crucial in determining the admissibility and reliability of scientific evidence. The courts

⁸ AIR 1961 SC 1808.

⁹ *Maneka Gandhi v. Union of India*, 1978 SCR (2) 621.

need to consider the voluntary nature of these tests, their impact on personal liberty, and their adherence to the principles of a fair trial, including the right against self-incrimination, as enshrined in Article 21 of the Indian Constitution.

Narco-analysis and Brain Mapping tests pose significant threats to the right to a fair trial in several ways:

Impairment of the right to legal aid and consultation with a lawyer: In the landmark case of *D.K. Basu v. State of West Bengal*¹⁰, the right to legal aid and consultation with a lawyer for a person in custody was established. However, these tests can undermine this constitutional protection as the person undergoing the test loses control over their responses. Consequently, legal advice becomes ineffective as the individual may unintentionally incriminate themselves without being able to seek guidance from their lawyer.

Delay in delivering test results and inability to recall: The copy of the proceedings and results of the tests is often not immediately provided to the subject. Additionally, these tests can affect the person's ability to recall the details of the examination due to the influence of substances or procedures used during the tests. This lack of access to information hampers the accused's ability to defend themselves effectively.

Influence of examiner suggestions: During these tests, examiners may inadvertently or intentionally introduce suggestions that can lead to false findings of guilt or innocence. The subject's responses may be influenced by the examiner's leading questions or cues, compromising the accuracy and reliability of the test results.

In light of these concerns, it becomes essential for legal systems to carefully consider the admissibility and reliability of scientific tests and ensure that the rights of the accused to a fair trial, including protection against self-incrimination and access to legal representation, are safeguarded throughout the investigative and trial processes.

Refusing to undergo the Narco-analysis and Brain Mapping tests during the investigative stage can lead to non-penal consequences that lie outside the protection of Article 20(3). These consequences may include the risk of custodial violence, increased police surveillance, or harassment. Even if a person is compelled to undergo these tests, they could face adverse consequences based on the contents of the test results, which may heighten the suspicions of investigators. While Article 20(3) may not apply in such circumstances, Article 21 can be invoked if these non-penal consequences violate "personal liberty."

The Supreme Court of India has previously recognized the rights of prisoners, including undertrials and convicts, as well as individuals in custodial environments, to receive fair and equitable treatment. For instance, in the case of *Sunil Batra v. Delhi Administration*¹¹, it was held that practices like "solitary confinement" and the use of bar-fetters in jails violate Article 21. Therefore, when individuals who refuse to answer questions during the investigative stage are exposed to adverse non-penal consequences, the assessment should consider the expansive scope of Article 21 rather than the right protected by Article 20(3).

¹⁰ AIR 1997 SC 610.

¹¹ AIR 1978 SC 1675

Scholars have argued that the use of force, as long as it is reasonably necessary, meets the requirement of "procedure established by law" under Article 21. However, it is crucial to note that the restrictions on personal liberty during these tests are not limited to physical confinement or the extraction of bodily substances. These techniques, including Narco- analysis, BEAP, and Brain Mapping, also involve testimonial responses. Therefore, evaluating their validity in light of personal liberty requires a broader standard of reasonableness and an inquiry into their constitutionality. This assessment should test their compatibility with various dimensions of personal liberty recognized by the judiciary, such as the right to privacy, the right against cruel, inhuman, or degrading treatment, and the right to a fair trial.

Considering these factors, it can be argued that forcing an individual to undergo any of these tests violates the standard of "substantive due process" required for restricting personal liberty.

The right to a speedy and fair trial is also a fundamental right available to both the accused and the victim. If the trial is not conducted promptly, it cannot be considered reasonable, just, or fair, thereby contravening Article 21¹². These scientific techniques assist in ensuring a speedy and fair trial. The concept of a fair trial and fair investigation should not only be considered from the perspective of the liberty or rights of the accused. The victim and society also suffer when the investigation process becomes compromised¹³. It is crucial to remember that the administration of the criminal justice system is a two-fold process, where justice for the victim is equally imperative as safeguarding the rights of the accused under the Constitution¹⁴. However, our legal system is currently favouring criminals while making it arduous for law-abiding citizens¹⁵.

Concluding Observations:

Article 21 of the Indian Constitution guarantees the fundamental right to life and personal liberty. This article has been interpreted by the Supreme Court of India to encompass the right to privacy. In the context of forensic and scientific techniques in the criminal justice system, the question arises whether employing these techniques poses a challenge to the fundamental rights to self-incrimination and privacy under Article 21. The Supreme Court has recognized the importance of safeguarding individual rights while considering the necessity of efficient investigations and public safety. In the *Selvi's* case, the court examined the issue of involuntary administration of scientific techniques such as Narcoanalysis, Polygraph Examination, and the Brain Electrical Activation Profile (BEAP) test for criminal investigations. The court concluded that these tests constitute testimonial compulsion and trigger the protection of Article 20(3), which safeguards against self-incrimination.

In summary, while forensic and scientific techniques play a crucial role in criminal investigations, their use must be balanced with the protection of fundamental rights, including the right against self-incrimination and the right

¹² *Mohan Lal v. State of Punjab*, AIR 2013 SC 2408.

¹³ *Gurbaksh Singh Bains v. State of Punjab*, 2013(1) Law Herald 652.

¹⁴ AIR 2013 SC 3794.

¹⁵ *Ranjan Dwivedi v. C.B.I.*, 2012 (8) SCC 495

to privacy. The Supreme Court has provided guidance through its interpretations and rulings, ensuring that these techniques do not violate the constitutional rights of individuals.

There are two suggestions to enhance the utilization of scientific techniques in the criminal investigation process. These are as follows-

Establish a National Forensic Science Commission: To ensure uniformity and standardization in the use of scientific techniques in criminal investigations, it is recommended to establish a National Forensic Science Commission. This commission would consist of experts from various forensic disciplines and would be responsible for setting guidelines, monitoring the quality of forensic laboratories, and overseeing the training and certification of forensic professionals. By centralizing the authority and expertise, the commission can promote consistency, credibility, and reliability in the application of forensic science throughout the country.

Strengthen International Cooperation in Forensic Investigations: In today's globalized world, criminal activities often transcend national borders. To effectively combat transnational crimes, it is essential to strengthen international cooperation in forensic investigations. India should actively engage in bilateral and multilateral agreements with other countries, promoting information sharing, joint training programs, and mutual assistance in forensic investigations. This collaboration would facilitate the exchange of knowledge, best practices, and advanced technologies, ultimately improving the efficiency and effectiveness of criminal investigations with an international dimension.

By implementing these suggestions, India can further enhance its forensic capabilities, ensure the admissibility of scientific evidence in courts, and strengthen the criminal justice system as a whole.

THE POLITICS OF THE PLATE: MEAT BANS, ANIMAL RIGHTS, AND THE INDIAN CONSTITUTIONAL FRAMEWORK

Dr. Pramod Tiwari*

Ayushman Singh**

Abstract: It is individual's choice what he wants to have on his plate. The debate around meat and non-vegetarianism has divided the citizens into two factions: those who are against the ban believe that we should allow citizens to have food of their choice whether vegetarian or non-vegetarian as long as it is not injurious or detrimental to health. On the other hand, those who support ban often cite public sentiments and religious beliefs and cultural practices. The state should ideally not intervene, unless it is in the interest of public to restrict or prohibit eating of certain items. This paper tries to analyze the recent judicial decisions surrounding the meat ban and choice of the food. The paper enquires into the constitutional permissibility of such government orders and bye laws of recent times which have restricted the sale and purchase of non-vegetarian food items at various religious places. The paper also briefly explores the recent stand of Indian judiciary towards animal rights, where the courts have recently conferred the legal status to the animals.

Keywords: Meat Ban, Animals, Food Habit, Vegetarianism.

Introduction:

India is a land of social, cultural and religious diversity. Indian colonial past is associated with spice trading. Britishers arrived to trade spices, as it was quite helpful in preserving meat. Geographical diversity, and the influx of various invaders and communities which came and settled in the Indian subcontinent, makes it a melting pot of culture full of various cuisines. Hinduism, the majority community in India has been advocating vegetarianism. Cow is considered holy and sacred in the Hindu religion. But contrary to the popular belief, as per the government survey, only 23-37% of Indians are vegetarian.¹ Majority of the country's population is non vegetarian, but the recent incidents where the demand of meat ban around the Hindu festival of *Navratri*, the demand of the Jain Community to shut the slaughter houses during *Paryushan* Period or the discussion around the idea of putting a ban on the selling and eating of meat near religious places has in fact sparked several discussions and debate around this issue. It has given rise to significant constitutional and legal questions. Whether the interest of general public should be given predominance over the sentiments of the people or vice versa in imposing such kind of bans. What comprises the interest of general public? Does the ban on selling meat items not infringing on the fundamental right to trade? Are these bans permissible within the constitutional framework or not. We need to understand one thing that these bans on meat or cow slaughter are not a national law or national policy, but it has been left on various states to frame policies or to come up with regulations on the same. As a result, various states from time to time come up with their own laws to regulate the sale and purchase of these meat items. There are states like Maharashtra which have implemented

* Assistant Professor (Sr. Scale), Faculty of Law, DU

** LLM, O.P. Jindal Global University, Sonipat

¹Soutik Biswas, 'The myth of the Indian vegetarian nation', 4th April 2018, BBC available at <https://www.bbc.com/news/world-asia-india-43581122>

stringent and harsh provisions banning even bulls and bullocks' slaughter. Maharashtra Government through an amendment in 2015 to the Maharashtra Animal Preservation Act, 1976 included bulls and bullocks along with cow (which was already included) to the list of banned animals for slaughtering. The preamble of the said act mentioned that the purpose of the act is "prohibition of slaughter of cows and for the preservation of certain other animals suitable for milch, breeding, draught or agricultural purposes". So, the purpose to include these other animals through amendment might be political, economic or culture based, but again it raised the question of constitutional permissibility and intent behind such laws.

The constitution provides safeguard and fundamental right to the citizens to practice trade of their choice. Article 19(1)(g) of the Indian Constitution gives right to *practice any profession, or to carry on any occupation, trade or business*. However, the Article 19(6) gives right to state to impose reasonable restriction on the exercise of the right conferred by 19(1)(g) in the interest of the general public. So, whenever a meat ban is imposed citing interest of the general public, factors like economic aspects of such ban and rights of citizens to carry trade of their choice should be taken into consideration. In *Chintaman Rao v State of Madhya Pradesh*², honorable Supreme Court tried to explain the reasonableness of restrictions imposed under Article 19(6) of the constitution which is placed on Article 19(1)(g): 'The word 'reasonable' implies intelligent care and deliberation, that is the choice of a course which reason dictates. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in Article 19(1)(g) and the social control permitted by Clause (6) of Article 19, it must be held to be wanting in that quality'.

But then later courts realized that it is difficult to fit 'reasonable' in a straitjacket definition. It was felt that we rather get an abstract and elastic description of the word 'reasonable' in case we try to define it, as in the case of *Chintaman Rao*. Thus, in the later decision, court agreed that we cannot come with a generalised principle on the same.

In case of *State of Madras v V.G.Row*³, court made an observation that 'there can be no general principles or standard to test reasonableness of a restriction on a particular trade. Each case has to be judged on the basis of facts and circumstances brought to the notice of the court'. The court in the same case laid down certain criterions which should be entered into the judicial verdict whenever testing the reasonableness of any restriction:

- The nature of right alleged to have been infringed
- The underlying purpose of the restrictions imposed
- The extent and urgency of the evil sought to be remedied thereby
- The disproportion of the imposition
- The prevailing conditions at the time

In 2004 the decision of Municipal Board Rishikesh to ban sale of eggs in Haridwar, Rishikesh and Muni ki Reti was challenged on the ground of being violative of fundamental right of trade. It was argued by the appellants in *Om*

²*Chintaman Rao v State of Madhya Pradesh*, AIR 1951 SC 118

³ *State of Madras v V.G. Row*, AIR 1952 SC 196

*Prakash & Others v State of Uttar Pradesh*⁴ who challenged the byelaw that eggs are beneficial and they help in improvement of public health in general.

But the court relied on the cases like *Chintaman Rao and V.G. Row* to test the reasonableness of the restriction imposed in the above-mentioned *Om Prakash Case* and they came to the conclusion that these places are of religious nature having significant importance in the Hindu Culture. Rishikesh, Haridwar etc. are home to numerous ashrams, temples and shrines. The demand to ban eggs and meat was constantly coming from various organisations and citizens of this place. Thus, the cultural and the religious background of place like Haridwar and Rishikesh makes it a unique case, to restrict the sale of meat and eggs. There have been various cities like Haridwar, Rishikesh, Vrindavan, Ayodhya, Mathura etc. where the government has placed restrictions on the selling of the meat items. In 2022 Mayor of South Delhi Municipal Corporation wrote to the officials to ensure closure of meat shops in Delhi during Navratri. His letter specifically mentioned "Keeping in view the sentiments and feelings of the general public, necessary directions can be issued to the officers concerned..."⁵ Although, no official order was passed in this regard by the Municipal Corporation but it sparked heated debate and controversy and the question of legality and enforceability of such a letter was also widely debated.

Similarly, another incident which sparked controversy in Ahmedabad was when the Ahmedabad Municipal Corporation started to clear out egg-stalls which were encroachments on the public roads. Justice Biren Vaishnav had orally remarked that "How can you decide what people should eat? ...Tomorrow you will decide what I should eat outside my house? Tomorrow, they will tell me that I should not consume sugarcane juice because it might cause diabetes or that coffee is bad for my health"⁶. The test of proportionality and the test of reasonableness can be used to determine if any action which curbs or limits fundamental right is justified or not. The test of proportionality basically means that the action taken to curb fundamental right must have a legitimate aim, the means must be suitable and necessary, and test of balance should be considered i.e. benefit from the action must outweigh the harm. Similarly, the action taken will be reasonable if it is not arbitrary and stands firm on the test of justice, fairness and equity. Thus, if the state is trying to regulate the choice of food or trying to impose ban on any kind of meat or non-vegetarian food, it must satisfy the test of proportionality and reasonableness.

Slaughtering of Animals:

On the issue of slaughtering of animals, the courts have given primacy to the economic angle of the whole situation. Large number of people are involved in this industry, any decision affects a significant number of population relying

⁴ *Om Prakash & Others v State of Uttar Pradesh*, AIR 2004 SC 1896

⁵ 'South Delhi civic body asks officials to ensure closure of meat shops during Navratri', 4th April 2022, *The Times of India* available at <https://timesofindia.indiatimes.com/city/delhi/south-delhi-civic-body-asks-officials-to-ensure-closure-of-meat-shops-during-navaratri/articleshow/90646230.cms>

⁶ Sparsh Upadhyay, 'Don't Throw Away Non-Veg Food Stalls Just Because Party In Power Says So Or To Satisfy Ego Of Some: Gujarat High Court To AMC', 9th Dec 2021, *Live Law* available at <https://www.livelaw.in/news-updates/throw-away-non-veg-food-stalls-party-in-power-satisfy-ego-gujarat-high-court-amc-187281?infinite-scroll=1>

on the same for their livelihood. In 2017, Uttar Pradesh government decided to take action against illegal slaughterhouses running within the state. But it also meant finding an economic alternative for so many people as this Rs 26,000 Crore industry was involving almost 25 lakh people directly or otherwise as per an India Today Report⁷. But the mere economic dependency and unemployment cannot be the ground to advocate illegal slaughterhouses.

The Supreme Court observed that killing of animals that are useful should not be permitted but otherwise if it is not useful or not reaping any economic benefit, they can be permitted to be killed. In *Hanif Qureshi & Ors. V State of Bihar*⁸, complete ban on slaughter of cow and its progeny has also been upheld to save cow as an animal species highly useful to human community. The legitimacy to government orders and bye laws for meat ban or shutting down slaughterhouses can be found in Article 19(6) of the Constitution, where restrictions can be placed in the interest of general public. In *Municipal Corporation, Ahmedabad v Jan Mohammed*⁹, court observed that - "in the interest of general public" found in Article 19(6) is of wide import comprehending public order, public health, public security, morals, economic welfare of the community and the objects mentioned in the Directive Principles"

Thus, the interest of the general public is an umbrella term and it includes lot of considerations under it. Going by the above interpretation, the objects mentioned in the DPSP can also be include within the purview the 'interest of the general public' mentioned in A.19(6). Article 48 of the Constitution in the form of Directive Principle urges to *prohibit the slaughter of cows, calves and other milch and draught cattle and to improve their breeds*. Thus, we can say that legally such bans on the slaughtering of cow and other milch and draught cattle is justified because of this wide import of the word in the interest of general public.

Cultural and legal backing for Animal Rights and Vegetarianism:

Our culture sees vegetarianism as the ideal practice, none the less India have had the culture and practice of non-vegetarianism since early age. The religious Hindu text Bhagwat Gita also promotes non-violence and teaches to generate a compassionate attitude towards all creatures. It preaches sattvik and vegetarian offerings in Verse 9.26, which states:

*patraṁ puṣpaṁ phalaṁ toyam
yo me bhaktyā prayacchati
tad ahaṁ bhakty-upahṛtam
aśnāmi prayatātmanah*

Thus, although the state have been interfering with the food choices of the individuals and bringing up laws and rules to regulate the food choices of people through a constitutional justification of Article 19(6) citing interest of the general public. This paper explores other justifications to regulate the choice of food more specifically non-vegetarianism and meat ban.

⁷ 'How UP's meat business was run before Yogi Adityanath cracked the whip', 31st March 2017, *India Today* available at <https://www.indiatoday.in/india/uttar-pradesh/story/meat-sellers-business-uttar-pradesh-slaughter-houses-yogi-adityanath-968803-2017-03-31>

⁸ *Hanif Qureshi & Ors. V State of Bihar*, AIR 1958 SC 731

⁹ *Municipal Corporation, Ahmedabad v Jan Mohammed*, AIR 1986 SC 1205

The Indic culture in India advocates vegetarianism, Hindu culture considers that both men and animals have been the creation of same God, The Prajapati. Thus, we should give them equal treatment, sympathy and love. Sattvik Food forms an integral part of the Indic vegetarianism culture. Sattvik is one of the guna (quality) described in the Hindu Philosophy.

Similarly, the recent judgements of various high courts and honorable supreme court advocates the equal treatment and respect towards animals. These judgements cast a duty on the citizens to act as the guardian of these animals (*parens patriae*). These animals also have a right to life under Article 21 and giving them legal status recognises their individuality and existence independent of human intervention. They shouldn't be subject to speciesism, which was also reflected in the case of *Animal Welfare Board of India v A. Nagaraja and Ors.*¹⁰, where court mentioned the Speciesism word defined by Richard Ryder. It is defined as "the assumption of human superiority over other creatures, leading to the exploitation of animals". This human superiority leads to the assumption on part of human race that they can exploit and kill animals as per their will and choice. Honourable Supreme Court further observed in the same case that even the animals have right to live under Article 21 of the Constitution. In this case, the court was basically dealing with animal rights under law, culture, constitution etc, in relation to the Jallikattu and Bullock-cart races that are conducted in parts of Tamil Nadu and Maharashtra.

In the case of *Karnail Singh and others v State of Haryana*¹¹, the Honourable High Court of Punjab and Haryana gave legal status to animals. It recognised all animals, including avian and aquatic species, as legal entities. It observed "entire animal kingdom including avian and aquatic are declared as legal entities having a distinct persona with corresponding rights, duties and liabilities of a living person". The same decision was earlier given in 2018 in *Narayan Dutt Bhatt v. Union of India & Ors.*¹² by Uttarakhand High Court.

The apex court made certain observations regarding animal rights which are relevant regarding our main discussion. Supreme Court observed that 'Court has also a duty under the doctrine of *parens patriae* to take care of the rights of animals, since they are unable to take care of themselves as against human beings'¹³. In the same case court observed that 'every species has an inherent right to live and shall be protected by law, subject to the exception provided out of necessity.'¹⁴ The court gave voice to the honor and dignity of the animals. They also have rights, which cannot be arbitrarily taken away.

Article 51A(g) of the Indian Constitution states that 'it shall be the duty of citizens to have compassion for living creatures. The court in case of *State of Gujrat v Mirzapur Moti Kureshi Kassab Jamat and Ors.*¹⁵ observed the link between Article 51A(g) and Article 48 and 48A of the Indian Constitution. 51A(g) in fact gives effect to 48 and 48A to be considered as a fundamental duty of the citizens.

¹⁰ *Animal Welfare Board of India v A. Nagaraja and Ors.*, (2014) 7 SCC 547

¹¹ *Karnail Singh & Ors. v. State of Haryana*, 2019 SCC OnLine P&H 704

¹² *Narayan Dutt Bhatt v. Union of India & Ors.*, (2018) 4 SCC 75

¹³ *Ibid.*

¹⁴ *ibid.*

¹⁵ *State of Gujrat v Mirzapur Moti Kureshi Kassab Jamat and Ors.*, (2005) 8 SCC 534

The Indian courts have been very clear in its approach whereby they don't want to uphold the ban on cattle which have become useless from economic perspective. In *M.H Quareshi v State of Bihar*¹⁶ court opined "that it is reasonable to prohibit slaughter of cows of all ages and male or female calves of cows and buffaloes, but prohibition of slaughter of bulls, buffaloes, bullocks and she-buffaloes below the age of twenty five years is unreasonable restriction on butchers' right to carry on their trade as well not in the public interest as these animals cease to be useful after the age of 15 years".

But, when we are talking about giving the status of legal entity to the animals (*Karnail Singh and Narayan Dutt Bhatt*) and recognizing the right to life of these animals (*A. Nagaraja*), I think the courts should reconsider whether economic productivity rider to differentiate between animals is an appropriate reason or not. Do we do the same in case of human beings? Just because some human being is economically contributing to the nation, does the punishment and law differ? Now, that we are moving towards providing personhood and legal status to animals, we should reconsider the legal basis of justifying these bans and choice of food.

Concluding Observations:

The courts also need to critically evaluate on the case-to-case basis, as sometimes there might be a situation in which sentiments of some group, their way of living and system of belief involved might not be same as that of the others. In that case, the courts have to be cautious enough that the sentiments should not eclipse the interest of the general public. Whenever placing any restriction, the court has to take proper care and deliberation. The question which we need to ponder on is whether food choices which largely depend on factors like age, gender, culture and environment should be controlled by the government and state citing interest of the general public. We live in a country where poverty is still at significant level and a large population is having no access to healthy and nutritious food. In such a scenario, should the choice of food be negotiated? Or should the cultural and religious factors play a supervening and major role in deciding the food habits? We are moving towards providing legal status to animals, and imposing a role of *parens patriae* on the citizens. In that situation, should the food choices be left on the citizens of the country or should the legislature need to re-think about animal rights and their existence. I believe, there can be no single concrete answer to this as the proponents of religion and Indic culture advocate vegetarianism and rely on the sentiments of the larger majority. On the other hand, food choices depend on lot of factors and there have been judgements which have propounded that food and food habits are part of right to life.

Thus, the food choices cannot be completely intervened and regulated by the state unless it is in the interest of general public or something is detrimental to health, environment etc.

¹⁶ *M.H Quareshi v State of Bihar*, AIR 1958 SC 731

AN ANALYSIS OF THE ROLE OF LEGISLATURE AND JUDICIARY IN A SPEEDY TRIAL UNDER INDIAN LAWS

Dr. Suresh Kumar Trivedi*

Apurva Vats*

Abstract: The analysis of the role of the legislature and judiciary in ensuring a speedy trial under Indian laws highlights the significance of these two branches in safeguarding the right to timely justice. The Indian Constitution guarantees the right to a speedy trial under Article 21, which provides for the protection of life and personal liberty. The legislative framework in India includes various constitutional, statutory, and judicial pronouncements that mandate timely justice and tackle existing delays in the legal system. The judiciary plays a crucial role in interpreting and applying these laws, ensuring that the right to a speedy trial is upheld and that justice is delivered promptly. The Indian Supreme Court has emphasized the need for expedited trials, particularly in cases involving serious crimes, to prevent undue delays that can adversely affect the accused, witnesses, and victims of crime. However, the Indian legal system faces numerous challenges, including delays in cases, court system inefficiencies, and a shortage of judges, which hinder the timely resolution of legal disputes. To address these challenges, both the legislature and judiciary need to work collaboratively to improve case management practices, allocate resources effectively, and implement reforms that expedite the trial process.

Keywords: Judicial Activism, Judicial Review, Judicial Overreach, Separation of powers, Judiciary Function.

Introduction:

With the development of the idea of Government assistance Express, the elements of the leader expanded unpresciently and certain force of the lawmaking body was assigned to it so it can effectively release its liability. By practicing assigned power, designated regulation in the type of rules, guidelines, warnings, by regulations and so on are made by it to satisfy the multi-layer liability assigned to it. The chief additionally carries out legal role while concluding departmental issues which is known as its semi legal capability. Consequently, the Regulation of Division of Abilities isn't material in its severe sense in the period of Government Assistance State. Today, it is important just as a system of governing rules in the working of government¹.

The right to a rapid preliminary is a basic guideline in the Indian general set of laws, revered in Article 21 of the Constitution, which ensures the security of life and individual freedom. The idea of expedient preliminary depends on the rule that an honest individual ought not be exposed to unjustifiable badgering by the general set of laws, and casualties ought to get equity as soon as could really be expected.

The regulative system for getting a fast preliminary in India incorporates arrangements, for example, Segments 309, 311, and 258 of the Code of Criminal Technique, which engage courts to facilitate the preliminary cycle.

* Assistant Professor, Faculty of Law, Madhav University, Abu Road, Sirohi (Raj)
Email: sureshkumarttrivedi1987@gmail.com

* Research Scholar, Faculty of Law, Madhav University Abu Road, Sirohi (Raj) Email:
- adv.apurvavats@gmail.com

¹ A.Kavanagh, "Judicial Restraint in the Pursuit of Justice", 60(1), the University of Toronto Law Journal, (2010) pp. 23-40. p. 24.

Nonetheless, different variables add to postpones in preliminaries, including debasement, neediness, ignorance, absence of assets, and stuffed penitentiaries.

The Indian High Court has perceived the right to a rapid preliminary as a basic right, holding that the quick preliminary is a fundamental element of a sensible, fair, and just technique ensured by Article 21. The Court has stressed the requirement for a joined and result-situated approach by the lawmaking body, legal executive, and chief to guarantee the right to quick preliminary.

The legal executive plays a pivotal part in upholding the right to a fast preliminary, with preliminary adjudicators being the best defenders of this right. The High Court's locale under Segment 482 of the Cr.P.C. what's more, Articles 226 and 227 of the Constitution can be summoned to look for suitable help or headings in proper cases².

The idea of fast preliminary as a central right has critical ramifications, including the need to guarantee that the denounced's all in all correct to a fair preliminary isn't compromised and that the right to expedient preliminary isn't utilized as a device to get away from criminal obligation. The High Court has explained that this choice will not be a ground for resuming a case or continuing in view of the power of 'Normal Reason' and 'Raj Deo Sharma' cases, which have proactively accomplished irrevocability.

All in all, the governing body and legal executive assume essential parts in guaranteeing the right to an expedient preliminary in India. The assembly should authorize and uphold regulations that advance rapid preliminaries, while the legal executive should guarantee that these regulations are carried out reasonably and productively. The right to a quick preliminary is a major part of the Indian general set of laws, and both the council and legal executive should cooperate to safeguard this right and maintain the standards of equity and decency.

The Teaching of Division of Abilities in the Indian Setting:

"Partition of Abilities" is the subject of discussion in the personalities of numerous scholars. Throughout the long term, old masterminds, political scholars, and political scholars, constituent designers, judges, and scholastic essayists generally thought about teachings. This suggests, as a matter of some importance, the division of abilities between the different groups of the State, managerial, regulative, and legal. The hypothesis of the division of abilities applies explicitly to three definitions of government powers³;

- i. More than one of the three public bodies ought not be a similar body.
- ii. No other state organ ought to be ruined by a solitary organ.
- iii. No other organ can play out the doled out job.

Capability of the Legal Executive:

The legal executive carries out two roles - first, it resolves debates gave

² K.Tyagi, "The Doctrine of Separation of Powers and Its Relevance in Time of Coalition Politics", 69(3), the Indian Journal of Political Science, (2008) pp. 619-625, - p.623.

³ R.Bhatkoti, "Human Rights and Judicial Activism in India", 72(2), the Indian Journal of Political Science, (2011). Pp.437-443 p 441.

under the watchful eye of it in agreement tradition that must be adhered to and second, it deciphers the law associated with the case viable. In deciphering a rule or a protected arrangement as per the words utilized by the governing body, an appointed authority makes a regulation by giving a significance to the expressions of the council. He reinvigorates such words and makes or shapes a collection of regulation that is reasonable for the situation athand. He concludes the particular tone and items in the words utilized by the lawmaking body. Consequently, legal executive performs official job while deciphering a regulation.

This job of the legal executive is a pivotal one, as the limited oversimplification of a regulation don't and can't expect the caprices of life. Impossible a regulation, as planned and instituted by the governing body, it is that regulation which would have the option to arrive at each corner and cleft of the circumstance for that it is intended to apply to, or to redress and cure the wickedness for that it is implied. Legal regulation making lays exclusively on the inventive understanding of the fundamental text like the Constitution and rules. The legal executive has no ability to make regulations autonomous of the essential messages. Consequently, the authoritative job of the legal executive is outlined.

The regulative job of legal executive is generally essential while deciphering a sacred arrangement, in light of the fact that a Constitution is drafted with an eye to the future and its capability is to give a proceeding with outline work to the genuine activity of the legislative power.

Its arrangements can only with significant effort be revoked or corrected. It must, thusly, be equipped for development and improvement throughout an opportunity to meet new friendly, political and verifiable real factors frequently unheard of by its designers.

The Constitution is certainly not a vaporous authoritative record typifying a bunch of lawful principles for the passing hour. It sets out standards for an extending future and is expected to persevere for a very long time to come and thusly, to be adjusted to the different emergencies of human undertakings. A protected arrangement should be understood not in a thin and choked sense but rather in a wide and liberal way in order to expect and assess changing circumstances and purposes so established arrangement doesn't get fossilized, yet stays sufficiently adaptable to meet the recently arising issues and difficulties.

Constitutional Clause:

Our Constitution makes no express notice of the standard of appointment of power. Be that as it may, the Constitution characterizes such directing standards, as Part IV and V of our Constitution separate the legal executive from the leader, as 'the public authority will go to lengths out in the open administrations through the chief.' There can be no formal, unyielding detachment of abilities besides in India, where considerable and individual cross-over happens

The Court Room- The Doctrine of Separation of Powers is a fundamental principle in the Indian Constitution, although it is not strictly applied in its absolute rigidity. The Constitution grants all citizens Fundamental Rights and empowers the independent judiciary to invalidate legislations or government

actions which violate these rights.

The judiciary is above the administrative executive and any attempt to place it on par with the administrative executive has to be discouraged.

The Indian Constitution has not recognized the doctrine of separation of powers in the absolute rigidity, but the functions of different organs of the Government have been sufficiently differentiated, so that one organ of the Government could not usurp the function of another.

The Supreme Court has the power to declare null the laws passed by the legislature in violation of any clause of the Constitution or legislation enacted by Parliament in the event of executive actions. The Court can also scrutinize Parliament's authority to amend the Constitution. If the Constitution's basic framework is disrupted, the Court has the power to declare any amendment unconstitutional. In some circumstances, the courts have provided orders to the Parliament to make legislation.

The Constitution grants the President specific powers in the legislative and judicial domains, and there are instances where the executive and judiciary perform functions typically associated with other branches. This intricate system underscores the adaptability of the Indian constitutional framework while also raising questions about the practical implementation of the separation of powers.

Leader / Executive- The President of India is regarded as the Supreme Executive Body in India and has the authority to consult the Supreme Court in compliance with Article 143 and the authority to pardon in accordance with Article 103(1) and Article 217(3). The executive also has an impact on the Court's functioning by the appointment of the Indian Chief Justice and other judges.

The Indian Constitution vests the executive power of the Union formally in the President, who exercises these powers through the Council of Ministers headed by the Prime Minister. The President is elected for a period of five years through an indirect election by the elected MLAs and MPs. The President can be removed from office only by Parliament by following the procedure for impeachment.

The Constitution of India vests the executive power of the State in the Governor, who exercises these powers in accordance with the Constitution and the law. The Governor may exercise his powers either directly or through officers subordinate to him.

The executive is responsible for the implementation of laws and policies adopted by the legislature and is often involved in framing of policy. The official designations of the executive vary from country to country, with some countries having presidents and others having chancellors.

The Indian Constitution adopted the parliamentary system of executive for the governments both at the national and State levels, which ensures that the government is sensitive to public expectations and is responsible and accountable. The parliamentary system puts checks and balances on the executive and ensures that it is answerable to the legislature or people's representatives.

The judiciary also performs some executive functions, such as reviewing the actions of the executive and declaring them void if found unconstitutional. The Supreme Court has the power to declare null the laws passed by the legislature in violation of any clause of the Constitution or legislation enacted by Parliament in the event of executive actions. The Court can also scrutinize Parliament's authority to amend the Constitution. If the Constitution's basic framework is disrupted, the Court has the power to declare any amendment unconstitutional. In some circumstances, the courts have provided orders to the Parliament to make legislation.

The doctrine of separation of powers is not strictly applied in the Indian Constitution, but the functions of different organs of the Government have been sufficiently differentiated, so that one organ of the Government could not usurp the function of another. The Indian Constitution has adopted a system of checks and balances to prevent the misuse of power by any branch of the government.

The Supreme Court has been accused of pronouncing judgments that are often termed as judicial legislation, which happens when the judiciary assumes the powers of the legislature. The judiciary has also been accused of infringing on powers of other branches, such as through the collegiums system. However, the essential function of the judiciary is to interpret the law rather than to be keen in the appointment of judges.

Administrative-The Doctrine of Separation of Powers is a fundamental principle in democratic governance, which divides the functions of government into three branches: legislative, executive, and judicial. The legislative branch is responsible for making laws, the executive branch for implementing them, and the judicial branch for interpreting them. This separation ensures that each branch can operate independently and prevent the concentration of power in one branch.

In the Indian context, the Constitution does not explicitly establish a strict separation of powers, but it is evident that the Constitution has created a legislature with detailed provisions for passing laws. The Constitution grants the President specific powers in the legislative and judicial domains, and there are instances where the executive and judiciary perform functions typically associated with other branches. This intricate system underscores the adaptability of the Indian constitutional framework while also raising questions about the practical implementation of the separation of powers.

The Indian judiciary has acknowledged that while the Indian Constitution does not explicitly endorse separation, it differentiates the functions of state organs sufficiently to prevent one from usurping the functions of another. The Supreme Court has held that the amending power of the Parliament is subject to the basic features of the Constitution, and any amendment violating the basic features will be declared unconstitutional. The doctrine of basic structure, as propounded by the Supreme Court, is a fundamental feature of the Indian Constitution.

The practical implementation of the separation of powers often involves overlaps and interdependencies between the branches. The Council of Ministers is elected from the Parliament, and the legislature is responsible for this Council. In the absence of its immunity, the legislature can exercise judicial power in the absence of Article 61 of the Constitution and remove the judges.

Article 105 of the Legislative Body is subject to sanctions. The President has the authority to consult the Supreme Court in compliance with Article 143 and the authority to pardon in accordance with Article 103(1) and Article 217(3). The executive also has an impact on the Court's functioning by the appointment of the Indian Chief Justice and other judges.

Legal Activism in India

Judicial /Legal activism in India refers to the proactive role of the judiciary in protecting the rights of citizens, interpreting the constitution, and ensuring the implementation of constitutional principles when the executive and legislative branches fail to act. It has been seen in India since the Emergency days and has been an important topic for IAS exam preparation.

Judicial activism is often seen as a success in liberalizing access to justice and giving relief to disadvantaged groups, but it can also lead to conflicts between the different branches of government and can undermine the separation of powers, which is an important principle in many democratic systems. There are various methods of judicial activism in India, including judicial review, public interest litigation (PIL), constitutional interpretation, access of international statute for ensuring constitutional rights, and supervisory power of the higher courts on the lower courts.

The significance of judicial activism lies in its ability to uphold citizens' rights and implement constitutional principles when the executive and legislative branches fail to act. It is seen as a last hope for protecting citizens' rights when all other doors are closed. The Indian judiciary has been considered the guardian and protector of the Indian Constitution.

However, judicial activism can also lead to judicial overreach, where a court or judicial body exceeds its legal authority or jurisdiction, making decisions that should properly be made by other branches of government. This can be controversial and lead to conflicts between the different branches of government, undermining the separation of powers.

Examples of judicial activism in India include the Kesavananda Bharati v. State of Kerala (1973) case, where the Supreme Court held that the power of the government to amend the constitution was not unlimited, and the Allahabad High Court rejecting the candidature of Indira Gandhi in 1973.

Development of Legal Activism

The High Court of India began as a technocratic court during the 1950s however at last procured more impact through established translation. Their progress has been unpretentious and steady, just observable over the long run. To be sure, the main driver of legal activism can be tracked down in the underlying court statement. Indian legal activism can be both practical and unduly critical. A court committed to attempting to work on the situation with minorities is marked as being supportive of extremist.

Need for Legal Activism

Notwithstanding the inflexible division of abilities between the parts of government, our constitutions carefully put forward the obligations of the different state organizations. The nation is as yet a government assistance state, and it is troublesome, as most non-industrial countries, to recognize the place

of the legal executive. It is outside the realm of possibilities for the lawmaking body to anticipate what is going on and to pass any piece of regulation. It is the obligation of the Courts to notice and eliminate legitimate escape clauses. At the point when the public authority neglects to achieve its obligations, it is the obligation of the legal executive to suggest that it perform different contentions against the progressivism of the legal executive. There are as of now two misinterpretations about legal activism.

Necessity of Judicial Activism in the Present Situation

The necessity of judicial activism in the present situation arises from various factors that highlight the importance of an active judiciary in safeguarding the rights of citizens and ensuring the proper functioning of the democratic system. Here are some key points derived from the provided sources that emphasize the need for judicial activism:

- i. **Failure of Other Branches:** Judicial activism becomes necessary when the executive and legislative branches fail to fulfill their duties effectively. In situations where the legislature does not enact necessary legislation or the government agencies fail to protect citizens' rights, the judiciary steps in to ensure justice and uphold constitutional values.
- ii. **Protection of Fundamental Rights:** Judicial activism is crucial when there is a violation of basic human rights or when the government infringes upon the fundamental rights of individuals. In such cases, the judiciary plays a vital role in ameliorating the conditions of citizens and ensuring justice.
- iii. **Correcting Executive Faults:** Judicial activism serves as a mechanism to correct errors made by the executive or legislative branches. By using its democratic power within the limits of the law, the judiciary can address issues where there is a misuse of power or a failure to act in the interest of citizens.
- iv. **Ensuring Democracy:** In a scenario where the principles of democracy are degrading, and there is rampant corruption in other organs of government, judicial activism becomes essential to uphold democratic values and prevent the compromise of democracy. The judiciary, through its active role, can correct wrongs and protect the democratic fabric of the nation.

Course of Judicial Activism

The course of judicial activism in India has evolved over time, reflecting the changing dynamics of the judiciary's role in protecting citizens' rights and upholding constitutional principles. Here is a summary of the progression of judicial activism in India based on the provided sources:

- i. **Post-Independence Era:** Initially, after independence, judicial activism was relatively subdued, with the executive and legislative branches dominating the governance landscape. However, in the 1970s, the Supreme Court of India began to adopt a more structural view of the constitution, asserting its judicial and constitutional authority.
- ii. **Landmark Cases:** Several landmark cases have shaped the course of judicial activism in India. For instance, in the Golaknath case, the Supreme Court declared that fundamental rights enshrined in the Constitution are immune and cannot be amended by the legislative assembly. These cases have limited the power of the legislature and strengthened the concept of judicial review.
- iii. **Role in Protecting Rights:** Judicial activism in India has played a crucial

role in protecting fundamental rights and addressing societal issues. Cases like *Hussainara Khatoon v. State of Bihar*, *Sheela Barse v. State of Maharashtra*, and *Sunil Batra v. Delhi Administration* exemplify the judiciary's intervention to safeguard individual liberties and ensure justice for the marginalized.

- iv. **Transformation:** The Supreme Court of India has transitioned from being a technocratic court to a more active and involved institution through its interpretation of laws and statutes. This transformation has allowed the judiciary to play a more proactive role in shaping legal and societal norms.
- v. **Positive and Negative Aspects:** Judicial activism in India has both positive and negative implications. While it reflects the judiciary's commitment to correcting injustices and expanding rights, it can also lead to concerns of judicial overreach when the judiciary exceeds its constitutional mandate.

In essence, the course of judicial activism in India has been marked by a gradual shift towards a more proactive and interventionist judiciary, aiming to protect citizens' rights, uphold the rule of law, and address societal challenges through legal interventions and landmark judgments.

Article 21 and Judicial Activism

Judicial activism under Article 21 of the Indian Constitution has significantly contributed to the protection of fundamental rights and the expansion of the right to life and personal liberty. The concept of judicial activism refers to the proactive role of the judiciary in interpreting and applying the law, often going beyond the traditional boundaries of legal interpretation to protect individual rights and promote justice. Article 21 of the Indian Constitution guarantees the protection of life and personal liberty, stating that no person shall be deprived of his life or personal liberty except according to procedure established by law. The Supreme Court of India has played a crucial role in interpreting and expanding the scope of Article 21, often through the use of judicial activism⁴.

One of the most significant examples of judicial activism under Article 21 is the case of *Maneka Gandhi v. Union of India*⁵, in which the Supreme Court expanded the scope of the right to life and personal liberty to include the right to a fair and reasonable procedure when an accused person is detained. The Court held that the right to life and personal liberty includes the right to dignity, privacy, and fair treatment, and that any deprivation of these rights must be based on a fair and reasonable procedure established by law.

Judicial activism under Article 21 has also played a crucial role in protecting the rights of marginalized and disadvantaged groups, such as women, children, and members of the lower castes. The Supreme Court has used judicial activism to strike down laws and policies that discriminate against these groups, and to promote their rights to education, health, and employment.

However, judicial activism under Article 21 has also been criticized for exceeding the traditional boundaries of legal interpretation and for interfering with the powers of the other branches of government. Critics argue that judicial activism can lead to inconsistent and unpredictable legal decisions, and that it

⁴ <http://nagaonjudiciary.gov.in/statement/ProceedingSC.pdf>.

⁵ AIR 1978 SC 597.

can undermine the principles of separation of powers and democratic accountability.

Judicial Overreach in India

Judicial overreach in India refers to the practice of courts exceeding their authority by making decisions or rulings that go beyond the scope of their jurisdiction or expertise. Critics argue that judicial overreach can undermine the democratic process by taking important decisions out of the hands of elected officials and placing them in the hands of unelected judges⁶.

Examples of judicial overreach in India include the Supreme Court's banning of firecrackers during Diwali, the imposition of patriotism in the national anthem case, and the ban on the sale of liquor within 500 meters of national or state highways. These decisions have been criticized for exceeding the court's authority and breaching the domain of the legislature and executive.

The concept of judicial overreach has its roots in the theory of the separation of powers, which was first articulated by the French philosopher Montesquieu in the 18th century. According to this theory, the powers of the government should be divided into three branches: the legislative, the executive, and the judicial. Each branch should operate independently of the others, with a system of checks and balances in place to prevent any one branch from becoming too powerful.

Critics of judicial overreach argue that it interferes with the constitutional principle of separation of powers, which is meant to ensure that each branch of government operates within its own sphere of influence. When the judiciary oversteps its bounds and starts making decisions that are the purview of other branches of government, this principle is threatened, and the balance of power is disrupted⁷.

Another criticism of judicial overreach is that the judiciary is not accountable to the people in the same way that elected officials are. Judges are appointed, not elected, and their decisions are often made in an opaque, highly technical fashion that can be difficult for laypeople to understand. This lack of accountability can lead to a situation in which the judiciary makes decisions that are not in the best interests of the people.

Advantages and Disadvantage of Legal Activism

Judicial activism is a judicial approach where judges interpret the law broadly and sometimes go beyond the traditional role of interpreting the law to shape social, economic, or political policies. It is a judicial philosophy where judges use their powers to advance specific values or objectives, rather than simply applying the law to the facts of a case. Judicial activism can take many forms, such as overturning laws or policies deemed unconstitutional, interpreting laws in a way that expands individual rights, or issuing rulings that mandate specific actions by government or private entities.

Judicial activism is a practical tool for protecting citizens' rights when the

⁶ <https://www.latestlaws.com/articles/speedy-trial-facilitation-of-legal-system-by-astha-sharma/>.

⁷ https://www.researchgate.net/publication/228236977_Justice_Without_Delay_Recommendations_for_Legal_and_Institutional_Reforms_in_the_Indian_Courts.

administration and legislature fail to uphold constitutional values. It disproves the notion that the judiciary is only a spectator in these situations. The practice of judicial activism was created and developed in the USA, and historian Arthur Schlesinger, Jr. stamped the term in 1947. In India, judicial activism has played a crucial role in upholding people's faith in the Constitution and judicial organs, enhancing administrative efficiency and good governance, plugging political lacunae, and allowing the participation of the judiciary in the advancement of the country and in upholding democracy⁸.

Examples of judicial activism in India include the *Golaknath & Ors v. State of Punjab*⁹, where the Supreme Court declared that the Constitution has a basic structure that cannot be altered even by Parliament, limiting the power of the legislature and strengthening the concept of judicial review.

In *Hussainara Khatoon v. State of Bihar case*¹⁰, where the Supreme Court accepted the matter and directed the state authorities to offer free legal aid to undertrial prisoners, to assist them in obtaining justice, bail, or final release.

In *Sheela Barse v. State of Maharashtra*¹¹ where the Supreme Court treated a journalist's letter as a writ petition and acknowledged the matter, issuing appropriate guidelines to the concerned authorities.

In *Sunil Batra v. Delhi Administration*¹², where the Supreme Court ordered the closure of several industries in Delhi to control pollution levels. Judicial activism has its pros and cons. On the one hand, it promotes social justice and accountability, helps enforce fundamental rights, and upholds people's faith in the Constitution and judicial organs. On the other hand, it can overburden the judiciary and lead to delays in justice delivery. Judicial activism can also be criticized for violating the separation of powers, limiting the functioning of the government, violating the limit of power set to be exercised by the constitution, and harming the public at large as the judgment may be influenced by personal or selfish motives.

Concluding Observations:

It should be reviewed that the legal executive has penetrated its lines. The High Court has long perceived that it is the chief's obligation to settle on choices liberated from sacred or regulative mediation. The Court just mediated on the grounds that the lawmaking body and the chief couldn't set the guidelines, and it did as such before the council passed the regulation. The Court was uncertain about taking on regulative or authoritative obligations. As indicated by the Court, judges don't endeavor to direct managerial or official jobs on the off chance that they are excessive. The legal executive can't carry out the roles of another body. Unlawful is a legal demonstration pointed only at interests other than those cherished all through the Constitution. The High Court has consistently followed the Constitution. A utilitarian majority rules government needs legal support. To guarantee that all the more impressive

⁸ Brewster, R. W. Government in Modern Society: With Emphasis on American Institutions. United States: Houghton Mifflin, (1963) 347-348, p 349.

⁹ 1967 SCR (2) 762.

¹⁰ AIR 1979 SC 1369.

¹¹ AIR 1983 SC 378.

¹² AIR 1978 SC 1675.

voices can't quietness incredible discourse, legal activism is fundamental. The lawmaking body's noticeable quality in arrangement making should be saved similarly as the legal executive's freedom should be safeguarded. Impedance by courts in their locale is a break of the Constitution's essential system, which is subsequently ridiculous. As in all circles of a majority rule government; the legal executive is straightforward and expected to figure out its limits. The essential need of great importance is to build the legal framework's effectiveness and speed, upgrade the legal foundation and the strength of judges, and lay out legal ability.

Considering the aforementioned conversation, the comment that the legal executive has exceeded its breaking point is illogical. The Court has consistently perceived it to be commitment of the chief to pass orders in areas of administrative vacuum, on the grounds that the field of leader is coterminous with that of the council. Just when both the council and the leader neglected to give regulation, the Court has viewed it as the obligation of the legal executive to mediate, and that excessively just until the governing body institutes appropriate regulation covering the region. The Court has been surprisingly mindful while choosing whether to carry out regulative or chief roles. In *Divisional Administrator Aravali Golf Club v. Chander Hass*¹³, the actual Court saw in such manner that the appointed authorities shouldn't ridiculously attempt to carry out chief or authoritative roles for the sake of Legal Activism.

The legal executive can't endeavor to assume control over the elements of another organ. A demonstration of the legal executive, that is spurred simply by objectives other than those revered in the Constitution, should be viewed as naturally ill-conceived. Clearly, the High Court has continuously submitted to the Constitution. It has bravely satisfied its essential obligation of maintaining the sacred objectives. It is naturally ordered obligation of the Court to authorize the law not really for every minor infringement but rather for those infringement that outcome in grave ramifications for general society overall. Truly, Legal Activism is valuable and assistant to a sound majority rules system. Keeping in view the goals of a vote based system, Legal Activism is important to guarantee that unheard voices can't be covered by additional compelling voices. For sure, on most events, ideal mediation of the legal executive has assisted majority rule government with thriving in spite of rehashed disappointment of different organs. Such activism, in any case, ought to be depended on just in outstanding conditions where the interest of the country or of poor people or more fragile areas of the general public would be in danger without a trace of legal activity.

With its activism, the High Court has just safeguarded the populace, especially, the powerless and the oppressed areas against the illegal demonstrations of the council and leader. The extraordinary commitment of Legal Activism has been to give a security valve in our vote based framework and an expectation that equity isn't far-off. Legal Activism has procured a human face by changing admittance to equity giving help to distraught gatherings and the poor.

It will flourish however long as the legal executive is regarded and not subverted by regrettable insights.

¹³ AIR 2008 SC 406.

A REVIEW ON EVIDENTIARY VALUE OF FIRST INFORMATION REPORT UNDER CRIMINAL LAWS OF INDIA

Pranav Pandey*

Aarav Tripathi**

Abstract: The First Information Report (F.I.R.) serves as the cornerstone of the criminal justice system in India, marking the initiation of criminal proceedings. This article reviews the evidentiary value of the F.I.R. under Indian criminal law, with a focus on its significance, limitations, and judicial interpretations. While the F.I.R. primarily acts as a procedural document to inform the police of a cognizable offence, its evidentiary role is nuanced. This review explores the legal framework established by the Bharatiya Nagarik Suraksha Sanhita, 2023 and examines landmark judicial decisions to assess how the F.I.R. is treated as evidence. The study highlights that although the F.I.R. is not substantive evidence, it can be used for corroboration, contradiction, or refreshing the memory of the informant. It also analyzes its probative value in cases where it is treated as a dying declaration or as part of the *res gestae*. Additionally, the review addresses the potential for misuse and emphasizes the safeguards provided to ensure fairness in its recording and use. By providing an in-depth examination, this article underscores the F.I.R.'s critical role in balancing the interests of justice while safeguarding the rights of the accused.

Keywords: Crime, First Information Report, Officer in Charge.

Introduction:

The term First Information Report (F.I.R.) is nowhere expressly defined in the criminal laws in India. But section 173 of the Bharatiya Nagarik Suraksha Sanhita, 2023(section 154 of Code of Criminal Procedure, 1973), describe about FIR and procedure for registration of FIR. An information belonging to cognizable offences which is registered firstly to SHO (Officer In-charge of Police Station) u/s 173 of BNSS 2023 is considered as First Information Report (F.I.R.) and any other information belonging to non-cognizable offences which is registered to SHO u/s 174 of BNSS 2023(under section 155 of Cr.P.C, 1973) is considered as Non-Cognizable Report (N.C.R.). Information to be qualified as an FIR, it should contain some allegations or information regarding the occurrence of a cognizable offence. It is not required that FIR should contain all the very minutes and detailed information regarding the commission of offence, i.e., who has committed the offence, place of commission of offence etc. But it should contain at least some information which is necessary to set the criminal law into motion¹.

In instances involving cognizable offences, a police officer has the authority to conduct the investigation without the prior permission from the magistrate. However, in case of non – cognizable offences, a police officer can conduct investigation only after obtaining the requisite prior permission from the concerned magistrate. Providing information to a police officer over the phone calls without disclosing the identity of the accused or specific details is a basic aspect of filing a First Information Report (F.I.R.). The primary purpose of an F.I.R. is to initiate criminal proceedings, and it is impractical to include every

***Research Scholar, Faculty of Law, University of Delhi-110007 Email: pranavapm98@gmail.com**

****LLM, Faculty of Law, University of Delhi- 110007**

¹ *Patel alias Krishna Kumar v. State of Uttar Pradesh*, AIR 2010 SC 2254.

minute detail with absolute precision in the report. The F.I.R. is not conclusive evidence of an offense; instead, it serves as a piece of evidence that can be utilized to support the prosecution's case. FIR is not required to be an encyclopaedia for detailed prosecution cases. It only must state the basic facts.²

Types of FIR:

Types of FIR is nowhere defined under criminal laws in India but after reading of section 173 of BNNS 2023, two types of FIR can be inferred which are as follows:

Zero FIR-Under sub-section (1) of Section 173 of the Bharatiya Nagarik Suraksha Sanhita, 2023, when "information" regarding a cognizable offence is given to an officer-in-charge of a police station (SHO), he is bound to register it in the "FIR Book" irrespective of the area where the offence was committed. (Zero FIR). What was actually needed was a provision to register with the FIR and transfer the same to the police station having jurisdiction to conduct investigation.

E-FIR-"E-FIR" is given statutory recognition under Section 173(1) BNSS, 2023. Section 173(1) stipulates that information relating to Cognizable offence may be given orally or through electronic Communication. There, Section 173 of BNSS 2023 provides for registration of FIR electronically. However, the signature of the Informant is required to be taken within three days before E-FIR can be taken on record.

Procedure for Registration of F.I.R.:

Section 173 of BNSS 2023 outlines the procedure for registration of F.I.R. Any individual can initiate the F.I.R. registration by visiting the police station or by electronic communication and informing the Station House Officer (SHO) about the occurrence of a cognizable offence. The SHO is responsible for recording the information personally or may delegate this task to a subordinate officer under him. The steps of registering for F.I.R. are as follows-

1. The information must be given to SHO of police station having jurisdiction to investigate into it.
2. If an informant gives information orally then it shall be written by SHO himself or he may appoint any subordinate officer under his direction for this.
3. If information is already given in writing by the informant, then it should be attested by his signature also.
4. The informant can give information on phone call also.
5. The officer in charge of the police station must read aloud to the informant the information that has been recorded in writing.
6. The officer in charge of the police station must then record the main points of this information in a diary, such as a station diary or general diary, in the format specified by the state government and the informant will be given a copy of the data that was recorded in this way without charge.

Further F.I.R. may be registered by an anonymous telephonic message, if it reveals the occurrence of cognizable offence but if it neither discloses the name of the informant or assailant nor describing about occurrence of cognizable

² *Jitender v. State of Haryana*, AIR 2012 SC 2488.

offence, then it will not be considered as F.I.R.³ Supreme Court has clarified that word “information” used u/s 173 of BNSS 2023 not required to be of a “reasonable information”. So the SHO should not check credibility and veracity of the information, he is duty bound to just register such information as an FIR⁴. An anonymous FIR can also be registered which means the informant only has the knowledge of occurrence of cognizable offence but he does not know who has committed the said offence then also an FIR can be registered but if informant does not disclose name of assailants voluntarily into FIR, then his statements in FIR shall be unworthy of credence.⁵

Remedy in case if registration of FIR has been refused

Section 173(1) of BNSS 2023 uses the word “shall” in its language which meant it leaves no space for any discretion to the SHO in registering of FIR and the legislative intent behind using of word “shall” clearly shows, that is to make FIR compulsory in case of cognizable offences, and Hon’ble Apex Court and Various other High Courts also had interpreted said provision in a plethora of judgments that SHO has a duty to lodge FIR if information relates to cognizable offences. But yet if SHO voluntarily does not register an FIR then section 173(4) of BNSS 2023 provides remedy in these circumstances by making provision that such informant has the following options.

One can submit a written application summarizing the information to the Superintendent of Police concerned (S.P.). If the Superintendent of Police have reason to believe that the details in the application indicate the occurrence of a cognizable offence, he can initiate an investigation himself or direct a subordinate officer to register an FIR and conduct an inquiry in accordance with the law. The designated officer will be vested with all the powers of SHO in relation to that offence.

If no action is taken by SHO and the Superintendent of police, then such an aggrieved informant has a remedy of approaching the concerned magistrate who may order lodging of FIR and investigate it.

If FIR has not been registered by approaching the above said authorities, then the victim can also seek recourse by approaching the respective High Court under Article 226 of the Constitution of India. He may request the issuance of a writ of Mandamus to compel the registration of an FIR.

The aggrieved informant can also approach concerned High Court u/s 528 of BNSS 2023, in which the High Court can pass an appropriate order for doing ends of justice.

The Constitution bench of the Supreme Court has addressed the question of whether the Station House Officer (SHO) is required to file a formal complaint (FIR) based on the information provided by the informant. The bench affirmed that the officer in charge of the police station does not have discretion in this matter, and the stipulation in sub-section (1) of Section 173 of the Bhartiya Nagarik Suraksha Sanhita, 2023 is mandatory in nature.⁶

³ *Tapinder Singh v. State*, AIR 1970 2 SC 113.

⁴ *State of Haryana v. Bhajan Lal*, AIR 1992 SC 335.

⁵ *Bhagwan Dass v. State (NCT) of Delhi* AIR 1981 SC 40.

⁶ *Lalita Kumari v. Govt. of U.P.*, AIR 2014 SC 187.

An FIR does not need to be filed right away if the informant's information does not show that a crime that can be prosecuted was committed. In some situations, a police officer is permitted to perform an initial investigation to ascertain whether a crime that is punishable by law has been committed. The court has designated several types of circumstances in which a preliminary investigation prior to filing a formal complaint is acceptable. In these situations, the police officers are free to do an initial investigation.

- In cases of commercial disputes.
- In cases of medical negligence
- In cases of corruption charges

Instances there are an unusual or prolonged delay in the registration of an FIR. The obligation to register for an FIR has several advantages which are as follows-

- It is a kind of "access to justice" for a victim.
- It upholds the supremacy of the law.
- It expedites the investigative process.
- It prevents manipulation in various ways in criminal cases.

Evidentiary value of FIR

When we discuss the evidentiary value of FIR, then it means how much value or weightage it keeps in the proceedings of a court of law. The Hon'ble Supreme Court, in numerous rulings, has clarified that a First Information Report (FIR) does not constitute standalone evidence. In other words, it does not serve as proof of the information it contains. Consequently, any acquittal or conviction of an accused cannot be solely based on the details provided in the FIR. Despite not being substantive evidence, the FIR holds significance in the courts of law and can be relevant under Section 151 & 163 of the Bharatiya Sakshya Adhiniyam, 2023, to contradict or to corroborate the informant's testimony, this is applicable only if the victim is summoned as a witness during the trial in a court of law.⁷ An FIR u/s 173 of BNSS 2023, is not a substantive evidence but it can only be used to corroborate and contradict the informant during proceedings of court of law.⁸ FIR may however become relevant u/s 4 of the Bharatiya Sakshya Adhiniyam, 2023.

The reasons why FIR have not been considered as substantive evidence are as follows.

1. The statements mentioned in F.I.R. are not taken on oath.
2. The statements recorded in F.I.R. are not verified by cross examination in court of law.
3. The statements recoded in F.I.R. are recorded in police station generally or in the present of the police, hence it is hit by section 23 of Bharatiya Sakshya Adhiniyam, 2023.

The reasons why FIR is considered as an important piece of evidence are as follows.

1. It can be used in the proceedings of the case for corroborating the informant.
2. It can be used for contradicting the information during the proceedings.
3. It can be used for refreshing the memory of the informant during the proceedings.
4. It can be used for impeaching the credit of the informant in court.

⁷ *Aghnoo Nagesia v. State v. of Bihar*, AIR1966 SC 119.

⁸ *Sambhu Dass v. State of Assam*, AIR 2010 SC 3300.

Delay in lodging FIR

It is advised that the FIR should be lodged with the police as soon as possible after the occurrence of cognizable offences. The very object of emphasis on the lodging of FIR at the earliest possible opportunity is that no matter how early the information is recorded, there would be a very little possibility of being manipulation of information or facts. Any Delay in lodging the FIR is often seen with the suspicion because it is a high possibility of introduction of manipulated and twisted facts or making of a concocted story. Hence whenever a delayed FIR is lodged then it is required and expected that a satisfactorily reason for lodging delayed FIR should be explained.

The question that whether the FIR lodged delayed or not always remains a question of facts. The court must decide it by considering and keeping in mind the whole facts and circumstances of each case. There is no mathematical formula for computation of delay in lodging the FIR, what the courts must examine in cases, to see whether the delay is inordinate and whether any satisfactory reason of the delay has been explained. Sometimes the delay in lodging the FIR is natural and it does not hamper the value of FIR.⁹ A mere delay in lodging the FIR is not always fatal to the case of prosecution. However, the court must take notice of the fact that the report was lodged belatedly.¹⁰

Quashing of FIR

Sometimes people misuse the laws and make false, frivolous and baseless allegations against targeted people, in this situation such a person has become aggrieved and in a helpless situation. The Courts have been given some inherent powers i.e. Apex Court (under article 142 of Constitution of India 1950) & High Courts (under section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 and Article 226, 227 of Constitution of India) to tackle such a situation and to do complete justice by giving relief to victim. Often false and baseless FIR have been lodged against people just because of taking personal revenge. At this moment they have no option but to approach the High Court or Supreme Court for the quashing of FIR. Generally, peoples seek remedy from High Court under section 528 of BNSS 2023, or under article 226 of Constitution of India for quashing of FIR and High Court gives them relief by passing an order for quashing of FIR. Hon'ble Supreme Court has described various guidelines regarding cases in which FIR need to be quashed.

Hon'ble Supreme Court has highlighted some situations in which High Court In its special power U/A 226 of The Constitution and inherent power under section 528 of BNSS 2023 should exercise such powers very sparingly and cautiously for quashing of FIR and any other criminal proceedings.¹¹

1. Where the allegation made in F.I.R./Complaint did not constitute prima facie an offence against accused.
2. In cases where the accusations outlined in the FIR or complaint do not indicate any cognizable offence that warrants an inquiry under Section 174 of the BNSS 2023.
3. Where the accusations in the FIR/Complaint do not infer of the occurrence of any offence at all.

⁹ *State of Maharastra v. Joseph Mingle Koli*, AIR 1997 Bom. 228.

¹⁰ *Ramdas v. State of Maharastra*, AIR 2007 SC 155.

¹¹ *State of Haryana v. Bhajan Lal*, AIR 1992 SC 335.

4. Where the information disclosed in F.I.R. is not a cognizable offence but constitutes only a non-cognizable offence which requires prior permission from the magistrate is needed before starting of the investigation.
5. Where the FIR are so vague, absurd, and inherently improbable that no prudent man can come on conclusion that any offence has been occurred.
6. Where a criminal proceeding is instituted against any person with a mala fide intention and for the purpose of annoying and making such person into a troublesome situation.

The Supreme Court has issued some specific guidelines and principles that the High Court should consider when exercising its inherent powers under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023. Additionally, the Court has emphasized that Section 528 of the BNSS preserves the inherent powers of the High Court, aiming to prevent the abuse of procedure of laws and to ensure the administration of justice. This provision doesn't grant new powers; rather, it acknowledges and safeguards the inherent powers inherent in the High Court.¹² It was held by the court that powers given under section 528 of the Bhartiya Nagarik Suraksha Sanhita, 2023, are not the rules but carves as an exception, which must not be exercised routinely in quashing of FIR but must be employed to avoid a miscarriage of justice.¹³ The two Judge Bench of Supreme Court i.e. Hon'ble Justice U.U. Lalit and hon'ble Justice Vineet Saran has quashed the FIR upholding that criticizing the government is the right of the citizens of the country and it should not amount to an offence of sedition and therefore the Bench has quashed the FIR.¹⁴ The Court has quashed an FIR registered against a person, with whom 27-year-old girl was living, after running away from his brother's home, for the purpose of living and marrying with such person. The brother of the girl lodged an FIR of kidnapping against such person just because of the reason that person had belonged to another cast, and brother of the girl was against of it. Here in this case Court has quashed the impugned FIR lodged against the person and held validity of the Inter-cast marriage.¹⁵

Concluding Obseervations:

The First Information Report is information that is first recorded in time as the name suggests the occurrence of a cognizable offence which is registered to the SHO. The FIR on its face reveals the occurrence of a cognizable offense. The fundamental intent behind filing the FIR is to set the criminal justice process in motion and prompt the police to initiate an investigation into the alleged offence. If such an officer refuses to lodge such information, then the informant may go directly to Superintendent of Police (S.P.) and then to court if both the Superintendent of Police and SHO are not registering the F.I.R. and refusing the same. If we talk about evidentiary value of the F.I.R., then we have seen that FIR is not considered to be substantive evidence because FIR is not verified through the cross examination by the opposite party and it is recorded on oath but still it can be used in some specific purposes, such as being utilized for contradiction (Section 151 of BSA 2023) and for corroboration (Section 163 of BSA 2023) of witnesses in the court. The FIR is occasionally examined considering section 4 of the Bharatiya Sakshya Adhiniyam, 2023, and it can be

¹² *Parbatbhai Aahir v. State of Gujarat*, AIR 2017 SC 4843.

¹³ *Som Mittal v. Govt. of Karnataka*, AIR 2008 SC 473.

¹⁴ *Vinod Dua v. Union of India*, AIR 2021 SC 414.

¹⁵ *Lata Singh v. State of U.P.*, AIR 2006 SC 475.

employed to refresh the memory of witnesses under Section 162 of Bharatiya Sakshya Adhiniyam, 2023, i.e. if witnesses are trying to remember something but he is unable to recall during the proceedings in the court of law. Delay lodging the FIR may sometimes prove fatal for the prosecution, because a delayed FIR is often seen with suspicion that's why it may lost its evidentiary value in the eyes of law. Hence whenever any delayed FIR is lodged, it is required and expected that it explains with satisfactorily the reason for the delay in lodging of the FIR. If any FIR is lodged with any malicious intention, or with mala fide object then such an FIR required to be quashed by the appropriate authority. Generally, the High Court, using its inherent powers as per Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 or its extraordinary jurisdiction under Article 226 of the Constitution of India 1950, has the authority to dismiss a frivolous FIR. The quashing of an FIR is a delicate and significant matter, necessitating the High Court to exercise caution and diligence. The Supreme Court has established various guidelines over multiple instances concerning the quashing of FIRs.
